POINTS

IN

LAW AND EQUITY,

SELECTED FOR THE

INFORMATION, CAUTION AND DIRECTION,

OF ALL PERSONS CONCERNED IN

TRADE AND COMMERCE;

WITH

REFERENCES TO THE STATUTES, REPORTS, AND OTHER AUTHORITIES, UPON WHICH THEY ARE FOUNDED.

DUBLIN:

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PREFACE.

THE importance of the ſubject, enders an apology for the publication f this book unneceſſary; and will, it is magined, be a ſufficient recommendaion of it, to that numerous and reſpectble part of the community for whoſe articular uſe it is deſigned.

THE immenſe amount of the daily ranſactions in commerce throughout his kingdom, and the deficiency of nformation as to many of the points of w by which thoſe tranſactions are lia- e to be affected, are two very remarkble facts. To diffuſe this neceſſary inormation therefore, together with that

which relates to the perſon, the dwelling, and the ſervants of the trader, is the object of the Compiler, in preſenting this collection to the Public. He has aimed at perſpicuity and certainty; and has purpoſely avoided all legal phraſes, except where no other could be ſubſtituted without circumlocution; and thoſe which are uſed are explained in the concluſion. The book might, with eaſe, have been conſiderably ſwelled by writing in a diffuſe or in an argumentative ſtile; but as the end might thus poſſibly have been defeated, brevity has been conſulted; and it is imagined that the aphoriſtical form in which it is written, will conduce to the eaſy retention of the matter in the memory.

As to laws that relate to the public revenue, and thoſe which have for their object the regulation of particular branches of trade, they were not within the Compiler's plan; for the perſons

who

who are affected by them, must neceſ-
arily be informed of ſuch as relate to
heir own concerns, and there are pub-
lications already extant which contain
hem.

It is not the intent of the Compiler
n this publication to make *every man*
is own lawyer; but merely to com-
unicate ſuch information upon thoſe
ubjects in which every trader has, at
ome time of his life, an intereſt, as
ay ſerve to caution him in avoiding
anger, and to direct him in the go-
ernment of his commercial and other
oncerns. This being his deſign, it
as not neceſſary to give a compleat
reatiſe under each head, nor to men-
on many points that are neceſſary for
rofeſſional men to know.

Among the various branches of the
ducation of young men intended for
he commercial world, it ſeems to be a
reat error, that the moſt obvious and
aterial parts of thoſe laws which muſt

affect

affect their future property and engagements, are not included. Indeed there is ſo general a negligence on this ſubject that a young man ſeldom acquires ſufficient knowledge to conduct himſelf without conſiderable danger, till either he or ſome of his friends have been taught by coſtly experience. The Compiler may therefore ſtand excuſed, if he ſuggeſts, that to make the laws relating to commerce a branch of the education of young men deſigned for trade will neither be found difficult, expenſive, nor without conſiderable utility.

THE Reader will obſerve, that where ſingle examples are given, they are but examples; that generally where there is the ſame reaſon, there is the ſame law; and that where the reaſon of the law ceaſes, there the law generally ceaſes alſo.

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Adulteration.

I.

ADULTERATION of wine, either by the merchant or vintner, is punishable. *Stat.* 12 *C.* 2. *c.* 25.

Agreement.

II.

Every verbal agreement not to be performed within a year, is void. *Stat.* 29 . 2. *c.* 3.

III.

If there be an agreement to enter into bond for the performance of a thing of certain value, without naming what sum, the law will intend it according to the value. 1 *Siderf.* 270.

Apprentice.

IV.

In the city of *London*, the Chamberlain is judge in all complaints, either of the apprentice againſt his maſter, or, of the maſter againſt his apprentice; and puniſhes the offender, at his diſcretion. *Wood's Inſt.* 523.

V.

If the indentures of an apprentice in the city of *London* are not inrolled, he may ſue them out and be diſcharged from his maſter. *Ibid.*

VI.

A maſter may correct his apprentice for negligence, or other miſbehaviour; but with moderation. *Noy's Maxims*, 13.

VII.

Apprentices to trades, not in the city of *London*, may be diſcharged on reaſonable cauſe, at their own requeſt, or at that of the maſter, either at the quarter

ter ſeſſions, or by one juſtice, with appeal to the ſeſſions. *Stat.* 5 *Eliz. c.* 4. 20 *G.* 2. *c.* 19.

VIII.

Juſtices upon the diſcharge of an apprentice may, if they think reaſonable, direct reſtitution of a rateable ſhare of the apprentice fee. 1 *Salk.* 67.

IX.

If an apprentice, with whom leſs than 10*l.* fee has been given, runs away from his maſter, he is compellable to ſerve out the time of his abſence, at any period within ſeven years after the expiration of his contract. *Stat.* 6 *Geo.* 3. *c.* 26.

X.

An apprentice, whoſe maſter becomes a bankrupt, ſhall be admitted as a creditor under the commiſſion, on account of his apprentice-fee, deducting for the time he had lived with the bankrupt. 1 *Atkyns* 149.

XI.

By the cuſtom of *London*, infants above fourteen, and under twenty-one years of age, may bind themſelves apprentices; but this extends not to watermen. 6 *Mod. Rep.* 69.

XII.

By the cuſtom of *London*, when a maſter dies, the executor ſhall put the apprentice to ſome other maſter of the ſame trade for the remainder of the time. 1 *Salk.* 66. Otherwiſe an apprentice is not ſtrictly aſſignable, nor tranſmiſſible. 1 *Doug.* 71.

Arreſt.

XIII.

In arreſts for debt, no outer door may be broke open, nor outer latch drawn, to execute the proceſs; otherwiſe it is in caſe of felony. *Plowd. Com.* 322.

XIV.

But where a lodger inhabits a houſe, having one outer door for owner and lodgers: a ſheriff's officer, having legally entered at the outer door, may, after notice and refuſal of admittance, break open the lodger's apartment to arreſt him on civil proceſs. *Lofft* 374.

XV.

If a bailiff touches a perſon's hand, either as he puts it out of a window, or the officer puts in his hand and touches him, (having a warrant to take him) he is then his priſoner; and he may break open the houſe to take him away. *Vent.* 306. 7 *Mod. Rep.* 2. 2 *Ld. Raym.* 1028.

XVI.

So where a perſon is lawfully arreſted, and afterwards eſcapes and ſhelters himſelf in a houſe. 2 *Hawk. P. C. c.* 14.

XVII.

A bailiff need not ſhew his warrant when he arreſts, if he be commonly known

known as a bailiff; but if he arreſts a man without a warrant, though he afterwards receives one, he is liable to an action for falſe impriſonment. 9 *Rep.* 69. *Dyer* 244.

XVIII.

A writ may be executed the day it is returnable, but not after. *Wilſon* 372. *Keb.* 718.

XIX.

No writ can be executed on a *Sunday*, except it be for treaſon, felony, or breach of the peace. *Stat.* 29 *C.* 2. *c.* 27.

XX.

But the bail may take his principal and confine him till *Monday*, and then render him. And a perſon that eſcapes may be taken. 6 *Mod. Rep.* 231. *Fanteſcue* 374.

XXI.

No ſeaman on board any of his majeſty's ſhips, can be arreſted for any debt, unleſs the ſame be ſworn to amount to 20*l.*

20*l*. *Stat*. 31 *Geo*. 2. *c*. 10. But a ſoldier may be arreſted for a debt of 10*l*. *Annual Mutiny Acts*.

XXII.

No member of the Houſe of Commons can be arreſted during the ſitting of parliament, nor within forty days after the prorogation, nor within forty days before the next meeting. 1 *Blackſt*. *Com*. 163.

XXIII.

The perſon of a peer is by privilege, at all times ſacred and inviolable; and this extends to *Scotch* peers (who are all peers of *Great Britain*) whether in or out of parliament. 6 *Rep*. 52. *Stat*. 5 *Ann*. *ſ*. 2. c. 8.

XXIV.

An ambaſſador, or public miniſter from a foreign court, together with his domeſtics, being regiſtered in the ſecretary of ſtate's office, is privileged from atreſts. *Stat*. 7 *Ann*. *c*. 12.

XXV.

Suitors, witneſſes, and other perſons neceſſarily attending any courts of record upon buſineſs, are not to be arreſted during their actual attendance; which includes their neceſſary coming and returning. 3 *Blackſt. Com.* 289.

XXVI.

By the cuſtom of *London*, the debtor may be arreſted before the money is due, to make him find ſureties. 8 *Rep.* 126.

XXVII.

A man's houſe is only for himſelf, his family, and his own goods; not for a ſtranger who flies thither for ſhelter, nor for his goods; but the ſheriff or his officer, after requeſt, may break open the doors. *Wood's Inſt.* 71.

XXVIII.

If a bailiff has a warrant to arreſt a man, and another hinder him from doing it, there being no actual arreſt, it is not a reſcous, but it is a contempt of court, and puniſhable accordingly. 6 *Mod. Rep.* 210.

XXIX.

If a man that is arrested for debt, escapes om the custody of the officer or gaoler, the eriff is liable to the plaintiff for the debt. *alt. Sher.* 484.

XXX.

If bailiffs *demand* more than their just fees hen offered them, and detain a man there- on, it is false imprisonment. *Co. Lit.* 124.

XXXI.

When bailiffs *take* fees not warranted by , it is extortion, and severely punishable fine and imprisonment. 1 *Hawk. P. C.* o.

Artificers.

XXXII.

A taylor, or other artificer, may detain a rment, *&c.* till payment is made for his bour. 1 *Ld. Raym.* 393.

XXXIII.

Seducing and tranſporting artificers to go and ſettle abroad is ſeverely puniſhable. *Stat.* 5 *G.* 1. *c.* 27. 23 *G.* 3. *c.* 13. 14 *G.* 3. *c.* 71. 21 *G.* 3. *c.* 37. 22 *G.* 3. *c.* 60. 25 *G.* 3. *c.* 67.

Vide No. 324. LABOURERS.

Arbitration and Award.

XXXIV.

Merchants and others, who deſire to end any controverſy (for which there is no other remedy but by a perſonal action or ſuit in equity), may agree that their ſubmiſſion to arbitration ſhall be made a rule of any of the king's courts of record, and may inſert that agreement in their ſubmiſſion or condition of the arbitration bond, which agreement the court ſhall make a rule; and if the parties diſobey it, they are liable to be puniſhed as for a contempt of the court. *Stat.* 9 & 10 *W.* 3. *c.* 15.

XXXV.

In awards, each party muſt be appointed to give or do ſomething to the other; for where all is to be performed on the one part, and none on the other, the award is void. *Hob.* 49.

XXXVI.

There are alſo theſe Rules as to Awards,

1. That the arbitrators muſt make a final end of the controverſy, ſo as the parties may have the fruits of it without ſuit. *Str.* 1024.

2. That they cannot delegate their authority.

3. That the award muſt be within the time limited. *Caſes temp. Ld. Hard.* 181.

XXXVII.

An award may be ſet aſide for corruption, or other miſbehaviour in the arbitrators or umpire, if it be proved on oath to the court within

within one term after the award is made. *Stat.* 9 & 10 *W.* 3. *c.* 15.

XXXVIII.

After an award made, the powers of the arbitrators ceaſe, and they can neither retract nor alter it. *Lex Merc.* 341.

XXXIX.

A man enters into a bond for the performance of an award, and afterward by his deed revokes the authority given to the arbitrators; the revocation is good, but the bond is forfeited. 8 *Rep.* 81, 82.

XL.

If a partner on the behalf of himſelf and the other partners, ſubmits to an arbitration, and promiſes to perform the award, they are not bound thereby, though he ſhall perform it. 2 *Mod. Rep.* 228.

XLI.

A married woman cannot ſubmit to an award, for the ſubmiſſion is a free act, and the

the will of a married woman is ſubject to that of her huſband. 1 *Lilly's Prac. Reg.* 136.

Aſſault and Battery.

XLII.

If one beat or aſſault me, I may juſtify beating of him. A man may alſo beat another in defence of his goods, his wife, his children, *&c.*: and a ſervant may juſtify beating another in defence of his maſter; for all theſe are but reaſonable when a battery is begun, though they ought only to be done to repulſe the injury. *Bract.* 9 *E.* 4. 1 *Hawk. P. C. c.* 160.

XLIII.

If one man attempt to beat another; as if he lifts up his cane or his fiſt in a threatening manner, though without touching, and though no actual ſuffering is proved, yet the party injured may have redreſs by an action of treſpaſs. 1 *Hawk. P. C. c.* 62.

XLIV.

Battery is the *unlawful* beating of another in the ſlighteſt manner in anger; and the remedy is both by action and indictment; the one for damages, the other for the breach of the public peace. *Finch L.* 203. 1 *Hawk. P. C. c.* 62.

Attachment.

XLV.

By the cuſtom of *London*, a man may attach money or goods belonging to his debtor in the hands of a ſtranger. 12 *Mod. Rep.* 213. But truſt-money is not within the cuſtom. 1 *Doug.* 379.

Authority.

XLVI.

Where a man hath an authority to do an act, he muſt do it in the name of him who gave the authority. 9 *Rep.* 76.

XLVII.

Where an authority is given and the perſon purſues not his authority, he is a treſpaſſer from the beginning. *Lutw.* 1480.

Bankruptcy.

XLVIII.

Every trader *who ſeeks his living* by buying and ſelling; every ſcrivener, banker, broker, or factor; but no farmer, grazier, drover, nor inn-keeper, (as ſuch) nor any perſon under twenty-one years of age, is liable to the ſtatutes of bankruptcy. *Stat.* 13 *Eliz. c.* 7. 21 *Jac.* 1. *c.* 19. 5 *Geo.* 2. *c.* 30.

XLIX.

By the cuſtom of *London*, a commiſſion may be taken out againſt a married woman, being a ſole trader therein, with reſpect to her ſeparate effects in trade. 3 *Burr.* 1776.

L.

No perſon ſhall have a commiſſion of bank
rupt awarded againſt him, but at the petitio
of ſome *one* creditor of 100*l.* or of *two* of 150
or of *more* of 200*l.* *Stat.* 5 *Geo.* 2. *c.* 30.

LI.

Acts of Bankruptcy are,

1. A man's departing the realm with in
tent to defraud his creditors.

2. Departing from his own houſe, with
view to ſecret himſelf and avoid hi
creditors.

3. Keeping in his own houſe privately, ſ
as not to be ſeen, or ſpoken with b
his creditors.

4. Procuring his money, goods, chattels
and effects, to be attached, or ſeque
tered, by any legal proceſs.

5. Procuring or ſuffering himſelf willing
ly to be arreſted, outlawed, or impri
ſoned, without juſt or lawful cauſe.

6. Making any fraudulent conveyance to a friend or ſecret truſtee, of his lands, tenements, goods or chattels.

7. Procuring any protection to ſecure his perſon from arreſts, not being privileged by parliament.

8. Lying in priſon for two months or more, upon arreſt for debt, without finding bail in order to procure his liberty.

9. Eſcaping from priſon after an arreſt for a juſt debt of 100*l.* or upwards.

10. Endeavouring or deſiring by any petition to the king, or bill exhibited in any of the king's courts, againſt any creditors, to compel them to take leſs than their juſt debts, or to procraſtinate the time of payment.

11. Neglecting to make ſatisfaction for any juſt debt to the amount of 100*l.* within two months after ſervice of legal proceſs for any ſuch debt upon any trader having privilege of parliament. *Stat.* 13 *Eliz. c.* 7. 1 *Jac.* 1. *c.* 15. 21 *Jac.* 1. *c.* 19. 4 *Geo.* 3. *c.* 33.

LII.

An aſſignment by deed of a leaſe, part
a bankrupt's eſtate, in contemplation of
act of bankruptcy, is itſelf an act of ban
ruptcy. 1 *Doug.* 86.

LIII.

So is an aſſignment by deed, of *all* a tr
der's ſtock, though only by way of ſecurit
and for a valuable conſideration. 1 *Bur*
467.

LIV.

So it is, though ſuch an aſſignment is o
ly *one third* of his ſtock. 3 *Wilſ.* 47.

LV.

A parol aſſignment of only part of a tr
der's ſtock, and though by way of ſecurit
if done in contemplation of a bankruptc
is void. *Cowp.* 629.

LVI.

If a trader execute a bill of ſale of all his ock and effects to pay certain creditors, the verplus, if any, to be accounted for to himlf, this is an act of bankruptcy. 1 *Doug.* 95.

LVII.

A ſtoppage or refuſal of payment is no t of bankruptcy; nor is an arreſt, if bail given. 7 *Mod. Rep.* 139.

LVIII.

After four, and within twelve months om the iſſuing of the commiſſion, the aſgnees are bound to give twenty-one days otice to the creditors, of a meeting to declare a dividend; and within eighteen months the ſame period, a ſecond and final dividend muſt be made, unleſs all the effects are xhauſted by the firſt. *Stat.* 5 *Geo.* 2. *c.* 30.

LIX.

If an executor becomes a bankrupt, the commiſſioners cannot ſeize the ſpecific effects of his teſtator, not even in money which ſpecifically can be diſtinguiſhed and aſcertained to belong to ſuch teſtator, and not to the bankrupt himſelf. 3 *Burr.* 1368, 1369.

LX.

Debts payable upon a contingency which may never happen, cannot be proved under a commiſſion of bankruptcy. 3 *Wilſ. C. B.* 270.

LXI.

Where a bond conditioned for the repayment of a ſum of money by a principal and ſurety has not been forfeited till after the bankruptcy of the ſurety, the debt cannot be proved under his commiſſion, and therefore he may be ſued upon it, notwithſtanding his certificate, the debt as to him being contingent. 1 *Doug.* 160.

LXII.

If *A.* at the inſtance of *B.* accepts a bill ayable to his order, not having any effects f *B.* in his hands, and *B.* becomes a bank- upt before the bill becomes due, and *A.* pays when due to an indorſee, it is not a debt gainſt *B.* till actually paid, and therefore not diſcharged by his certificate. 1 *Doug.* 66.

LXIII.

If *A.* draws a bill of exchange on his cor- eſpondent abroad, which is afterwards pro- eſted for non-acceptance, and he becomes ankrupt before the return of the bill, the ebt, being contracted when the bill was rawn, may be proved, and is diſcharged y the certificate. 2 *Str.* 949. 3 *Wilſ.* 17.

LXIV.

One guilty of uſury, cannot come in to rove his debt as a *bonâ fide* creditor under he commiſſion, for the whole debt is void. *Vez.* 489. 1 *Atk.* 125.

LXV.

Money owing out of *England* to a bankrupt, may be attached by the law of the place, after the bankruptcy, for a debt due before it. 1 *Doug.* 170.

LXVI.

A creditor may chuſe whether he will come in under the commiſſion or not; but if he chuſes to come in, he cannot proceed at law likewiſe for the ſame debt. Therefore if a creditor has the bankrupt in execution, he muſt diſcharge him from the execution before he can be admitted as a creditor under the commiſſion. And a petitioning creditor, by the very petition hath made his election. 1 *Atk.* 83. 152.

LXVII.

If any eſtate of the bankrupt be extended after he is become a bankrupt, by any perſon under pretence of his being accountant or debtor to the king, the commiſſioners may examine upon oath whether the ſaid debt were due to ſuch debtor or accountant,

whether any contract were originally made between him and the bankrupt; and if it was made with any other perſon, or for the uſe of any other perſon, the commiſſioners' proceedings ſhall be available againſt the extent. *Stat.* 21 *Jac.* 1. *c.* 19.

LXVIII.

Otherwiſe, an extent of the crown is available againſt a commiſſion of bankruptcy; the crown not being within the ſtatutes of bankrupts. 1 *Atk.* 262.

LXIX.

Perſons who have ſecurities payable at a future day, for goods delivered to ſuch as become bankrupts before the time of payment, ſhall be admitted to prove ſuch ſecurities, and receive their proportion with the other creditors, deducting intereſt from the time of payment till the time it would have become due. *Stat.* 7 *Geo.* 1. *c.* 31.

LXX.

Where debts carry intereſt, the intereſt ſhall be continued down to the date, of the commiſſion; but note, creditors have no right to prove intereſt upon them, unleſs it is expreſſed in the body of the notes. 1 *Atk.* 151.

LXXI.

No debtor ſhall be prejudiced by the payment of his debt to the bankrupt before he hath notice, or it is notorious that he is bankrupt. *Stat.* 1 *Jac.* 1. *c.* 15.

LXXII.

Commiſſioners generally recommend to the aſſignees to pay the whole of the wages to menial ſervants; but where the wages of clerks and other ſuperior ſervants are large, and the arrears long, they ſhould come in as common creditors. *Green's Sp. of Bank. Laws.*

LXXIII.

If there are two joint traders, and one of them becomes a bankrupt, the commiſſioners cannot meddle with the intereſt of the other, for it is not affected by the bankruptcy of his partner. 3 *Salk.* 61.

LXXIV.

The aſſignees muſt keep books of account of all ſums and effects received, which every creditor who hath proved his debt may inſpect at ſeaſonable times. *Stat.* 5 *Geo.* 2. c. 30.

LXXV.

Aſſignees are not anſwerable for loſſes occaſioned by their own neceſſary acts; but if an aſſignee truſt a perſon with the payment of money, who fails, and the money is loſt, ſuch aſſignee ſhall be anſwerable over to the creditors; unleſs he conſulted the body of creditors in the appointment of ſuch agent. 1 *Atk.* 87.

LXXVI.

If any perſon ſwear that any ſum is due to him from the bankrupt, which is not due, or more than is due, he ſhall ſuffer as in caſes of perjury, and moreover ſhall forfeit double to the creditors. *Stat.* 5 *Geo.* 2. *c.* 30.

LXXVII.

Every ſecurity given to the uſe of any creditor, to induce him to ſign the certificate, ſhall be void. *Ibid.*

LXXVIII.

Though a prior commiſſion has been ſuperſeded by conſent, a certificate under a ſecond bankruptcy does not protect future effects, unleſs the bankrupt pay fifteen ſhillings in the pound under the ſecond commiſſion. 1 *Doug.* 46.

LXXIX.

If ſome of the bankrupt's creditors are induced by money to ſign the certificate though the bankrupt does not know of it at the time of their ſigning, nor even when he makes the neceſſary affidavit in order to obtain the allowance by the chancellor, yet if he knows it before the actual allowance, the certificate is void. 1 *Doug.* 228.

LXXX.

If money is given without the bankrupt's privity, to induce creditors to ſign in order to deprive him of the effect of his certificate, and ſufficient in number and value have ſigned, excluſive of thoſe who have taken the money, the certificate ſhall be valid. 1 *Doug.* 280.

LXXXI.

If a creditor has taken money for ſigning a bankrupt's certificate, it may be recovered back in an action for money had and received, becauſe of the oppreſſion. 1 *Doug.* 472.

LXXXII.

An agreement to pay money to the aſſignees of a bankrupt on his certificate being allowed, though for the benefit of *all* the creditors, is void. 1 *Doug.* 695.

LXXXIII.

A bankrupt cannot claim either his certificate or his allowance, if he has given with any of his children above 100*l.* for a marriage portion, unleſs he had at that time ſufficient left to pay his debts. *Stat.* 5 *Geo.* 2. *c.* 30.

LXXXIV.

Nor if he has loſt at any one time 5*l.* or in the whole 100*l.* within a twelve month before be became bankrupt, by any manner of gaming, or wagering whatever, or within the ſame time has loſt 100*l.* by ſtock-jobbing. *Ibid.*

LXXXV.

Nor if he neglects to discover any fictitious debt, that may be offered to be proved under the commission. *Ibid.*

LXXXVI.

The bankrupt after the allowance of the certificate, must, on notice in writing from the assignees, attend to settle his accounts, and for every day's attendance he shall be allowed two shillings and sixpence. *Ibid.*

Vide LEGACY, No. 405. LANDLORD and TENANT, No. 394, and FACTOR, No. 282.

Bankers.

LXXXVII.

No number of persons whatsoever, exceeding the number of six, may be united in partnership in *England*, to borrow, owe, or take up, any sum of money on their bills or notes

notes payable at demand, or at any time leſs than ſix months. *Stat.* 6 *Ann. c.* 22.

LXXXVIII.

A banker's draft is only taken conditionally *if paid*, and not otherwiſe, unleſs there is an expreſs agreement to take it as caſh. 2 *Salk.* 442. 2 *Ld. Raym.* 928.

LXXXIX.

But a perſon in *London* who receives a draft on a banker there, is obliged at his peril to preſent it for payment on the day he receives it, unleſs there is not a reaſonable time for that purpoſe. * 2 *Stra.* 1175. 1248. 1 *Ld. Raym.* 743.

* The compiler is aware that it has been held by a very high and reſpectable authority, that it is not neceſſary to preſent a banker's draft for payment on the day in which it is received, and that twenty-four hours is a reaſonable time for that purpoſe; but with great deference to that authority, he conceives that the conſequences of ſuch an allowance generally, may poſſibly be highly prejudicial to the commerce of the capital. The uſual way in which bankers' drafts are diſpoſed of, is by ſending them to the banker of the holder, (and almoſt every man in trade now employs a banker

XC.

A banker's draft payable to bearer and indorſed, is a bill of exchange againſt an indorſer, and he is equally liable. 1 *Ld. Raym.* 743.

a banker in his money tranſactions) and admitting that twenty-four hours is a reaſonable time, then a banker might, without prejudice to himſelf, neglect to preſent all the drafts of his cuſtomers till the following day. This it muſt be allowed is an extreme caſe, but yet within the limits of ſuch a rule. On the other hand it is unreaſonable that a man ſhould ſuſtain any injury, who receives a draft at *Hyde-Park Corner* late in the day, becauſe he does not run down into the city to preſent it on the ſame day. The jury are in ſuch caſes the moſt proper judges of what is a reaſonable time, (which cannot be fixed by any ſtated rule, but muſt vary with circumſtances) in as much as it is generally compoſed of men accuſtomed to commercial tranſactions, and liable to be in a ſituation ſimilar to that of the parties. The compiler has therefore inſerted the former determinations, which he holds to be law.

XCI.

If a bank bill or banker's draft payable to *A.* or bearer, be delivered to him and loſt, and is afterwards found by a ſtranger; *A.* may have an action againſt the finder for he had no title to it; though if the banker pays it he is indemnified. But if the ſtranger transfers it to *B.* for a valuable conſideration, *A.* cannot maintain an action againſt *B.* by reaſon of the courſe of trade, which creates a property in the aſſignee. 1 *Salk.* 126.

XCII.

If a banker's clerk overpays a bill, he may be admitted evidence for his maſter, though unleſs the money be recovered he is anſwerable; but this is only for the neceſſity of the thing, for the conſequence of rejecting ſuch a witneſs would be miſchievous. 11 *Mod. Rep.* 261. 1 *Stra.* 647.

Bills of Exchange and Promiſſory Notes.

XCIII.

An agreement to honour a bill of exchange is virtually an acceptance. The acceptance need not be on the bill, it may be by collateral writing. 3 *Burr.* 1674.

XCIV.

A promiſe to accept a bill of exchange is the ſame as an actual acceptance; it will bind though the acceptor has no effects in hand, and without conſideration. 1 *Stra.* 648.

XCV.

If a bill of exchange is not accepted, an action will immediately lie againſt the drawer, before the time when it is made payable. 1 *Doug.* 55.

XCVI.

An agreement to accept on certain conditions is discharged, if the conditions are not complied with. 1 *Doug.* 297.

XCVII.

Nothing but an express declaration by the holder of a bill of exchange, will discharge the acceptor. 1 *Doug.* 247.

XCVIII.

The drawing of a bill of exchange, is sufficient to bring the drawer within the custom of merchants. 1 *Salk.* 125.

XCIX.

A bill of exchange payable to bearer and indorsed, is a bill of exchange against an indorser, and he is equally liable. 1 *Ld. Raym.* 743. 1 *Salk.* 125.

C.

In actions on bills of exchange, brought by an indorsee against an indorsor, the plaintiff must

must prove a demand of, or due diligence to get the money of, the acceptor, but need not prove any demand on the drawer. 2 *Burr.* 669.

CI.

In actions on promiſſory notes, brought by an indorſee againſt an indorſor, the plaintiff muſt prove a demand of, or due diligence to get the money from the maker of the note. 2 *Burr*, 669.

CII.

If any accident happens by the negligence of the holder of a bill of exchange in prejudice of the drawer, he has loſt his remedy againſt him. 1 *Salk.* 127.

CIII.

What ſhall be reaſonable notice to the indorſor of non-payment by the acceptor of a bill of exchange, or drawer of a promiſſory note, is for the deciſion of the jury. 1 *Doug.* 515. 1 *Term Rep.* 167.

CIV.

If the indorſee of a bill of exchange accepts any ſum in part of payment, he can never

never after reſort to the drawer. 1 *Ld. Raym.* 743.

CV.

An indorſement written on a blank note or check in the form of a bill of exchange, or promiſſory note, will bind the indorſor for any ſum and time of payment, which the perſon to whom he entruſts the note ſo indorſed ſhall inſert in it. 1 *Doug.* 514.

CVI.

A bill of exchange is entire, and cannot be apportioned and multiplied into ſeveral accounts; ſo that if *A.* draws a bill of 100*l.* payable to *B.* or order, *B.* cannot aſſign 50*l.* thereof, ſo as his aſſignee ſhall have an action for the ſame. 1 *Ld. Raym.* 360. *Carth.* 466.

CVII.

If a bill or note be payable to a man or order, who indorſes it, and paſſes it to a third perſon, who delivers it to a fourth for a valuable conſideration, (not in diſcharge of a former debt) but without his indorſement, it is a ſale of the bill and the holder cannot

cannot maintain an action againſt him. 12 *Mod. Rep.* 241.

CVIII.

If a man has a bill of exchange, he may *verbally* authoriſe another to indorſe his name on it; and when that is done it is the ſame as if he had done it himſelf. 12 *Mod. Rep.* 564.

CIX.

Every promiſſory note, where the whole or any part of the conſideration is money knowingly lent for gaming, is void to all intents and purpoſes whatever. *Stat.* 9 *Ann. c.* 14.

CX.

A bill of exchange, or promiſſory note, given upon an uſurious contract is void in the hands of an indorſee, though for a valuable conſideration, and without notice of the uſury. 1 *Doug.* 736.

CXI.

A bill of exchange, indorſed in blank, being ſtolen and negotiated, an innocent indorſee for valuable conſideration ſhall recover upon it againſt the drawer. 1 *Doug.* 636.

CXII.

So the innocent holder of a forged bill of exchange for which he has given valuable conſideration ſhall recover againſt the acceptor, who accepted it, not knowing of the forgery. 3 *Burr.* 1454.

CXIII.

If any inland bill be loſt or miſcarry within the time limited for its payment, the drawer ſhall give another bill of the ſame tenor, upon ſecurity being given to indemnify him in caſe the bill ſo loſt or miſcarried be found again. *Stat.* 9 & 10 *W.* 3. *c.* 17.

CXIV.

If bills or notes encloſed in a letter and ſent to the General Poſt-office are loſt, no action lies againſt the poſt-maſter. 1 *Salk.* 17.

Vide LIMITATION, No. 424. and MASTER and SERVANT, No. 443.

Bill of Lading.

CXV.

If a bill of lading is made to *A.* he has thereby an ownerſhip, ſo as to maintain an action; but if it is to *A.* for the account of *B.* then *A.* is only *B*'s factor, and *B.* has the ownerſhip and muſt bring the action. 12 *Mod. Rep.* 156.

Bond.

CXVI.

If a man execute his bond to another, conditioned that neither he nor his aſſigns, ſhall

ſhall carry on ſuch a trade in a certain place for any number of years, upon a good conſideration; as if *A.* engages in a bond to *B.* conditioned that neither he nor his aſſigns, ſhall carry on the trade of a woollen-draper within the city of *Norwich*, during twenty-one years, and the conſideration is that *B.* had purchaſed the leaſe of *A*'s ſhop, then a woollen-draper's; the bond is good, and *B.* may maintain an action upon it. *Forteſ.* 296.

CXVII.

But a bond conditioned not to ſet up trade generally in any other place is void; for it can ſerve the purpoſe of oppreſſion only. *Ibid.*

CXVIII.

If two perſons become jointly bound in a bond, and they both ſign and ſeal it, but one only delivers it: it is the bond o him only that delivers it, though another is named therein with him; for it is not his deed without delivery. 8 *Mod. Rep.* 242.

CXIX.

A perſon ſhall not be charged by a bond, though ſigned and ſealed, without delivery, or words, or other thing amounting to delivery. 1 *Leon.* 140.

CXX.

If a bond is made "I oblige myſelf," leaving out the words "heirs, executors, and adminiſtrators," this is good, and the executors and adminiſtrators ſhall be bound thereby; though the heir is not unleſs he is ſpecially named. *Dyer*, 13. 271.

CXXI.

If no time is limited in a bond for the payment of the money, it is due preſently, and payable on demand. 1 *Brownl.* 33.

CXXII.

If a bond be of twenty years ſtanding, and no demand be proved thereon, or good cauſe of ſo long forbearance ſhewn to

the court: upon pleading, *ſolvit ad diem*, it ſhall be intended paid. *Mod. Caſ.* 22.

CXXIII.

When no place is mentioned for the performance of a condition, the obligor is to find out the perſon of the obligee, if he is in *England*, and tender the money, otherwiſe the bond will be forfeited; but when a place is appointed he need ſeek no further. *Co. Lit.* 210.

CXXIV.

Such words whereby the intention of the parties may appear, are ſufficient to make the condition of a bond good, though they are not proper; and it ſhall not be conſtrued againſt the expreſs words. 1 *Saund.* 66.

CXXV.

When a condition is doubtful, it is always taken moſt favourably for the obligee; but ſo as a reaſonable conſtruction be made as near as can be, according to the intention of the parties. *Dyer* 51.

CXXVI.

If a drunken man gives his bond, it binds him; and a bond without conſideration is obligatory, and no relief ſhall be had againſt it, unleſs it were fraudulently obtained. *Jenk. Cent.* 169.

CXXVII.

A perſon enters voluntarily into a bond, though there was not any conſideration for it, yet if it were not obtained with fraud, he ſhall not be relieved in equity. But a voluntary bond may not be paid in the courſe of adminiſtration, ſo as to take place of real debts, even by ſimple contract, yet it ſhall be paid before legacies. 1 *Chan. Caſ.* 157.

CXXVIII.

Interlineation in a bond, in a place not material, will not make the bond void; otherwiſe if it be in a material part. 1 *Nelſ. Abr.* 391.

CXXIX.

A bond may be made void by raſure, as where the date, *&c.* is raſed after the delivery, which goes to the whole. 5 *Rep.* 23.

CXXX.

If one man aſſign a bond to another, the action muſt be brought in the name of the original creditor; for the perſon to whom it is aſſigned, is rather an attorney than an aſſignee. *Wood's Inſt.* 282.

CXXXI.

In caſe of a bond with a condition for the payment of money, the payment or tender of the principal ſum due, with intereſt and coſts, even though the bond be forfeited, and as ſuch commenced thereon, ſhall be full ſatisfaction and diſcharge. *Stat.* 4 & 5 *Ann. c.* 16.

Vide DEED, and ARBITRATION and AWARD, No. 39.

Broker.

CXXXII.

Every perſon acting as a broker, or employing any other to act under him as ſuch, within the city of *London*, muſt be regularly admitted by the mayor and aldermen. *Stat. 6 Ann. c.* 16.

Carrier.

CXXXIII.

There is always an implied contract in law, on the part of every carrier, or bargemaſter, to be anſwerable for the goods he carries, unleſs the goods are conſumed or damaged by the act of God, as by lightning or a ſudden guſt of wind, *&c.* 1 *Stra.* 128. 3 *Blackſt. Com.* 165.

CXXXIV.

A common carrier may refuſe to admit goods into his warehouſe, before he is ready to take his journey; but an action will lie againſt him, if his horſes are not loaded, and he refuſes to take a package proper to be ſent by a carrier; for one that has made profeſſion of public employment, is bound by the utmoſt extent of that employment to ſerve the public. 1 *Ld. Raym.* 652.

CXXXV.

If a common carrier refuſes to carry unleſs a promiſe is made to him that he ſhall not be charged with his negligence, default, or miſdemeanor, that promiſe is void. *Noy's Maxims*, 92.

CXXXVI.

A carrier may retain the goods till his hire is paid him. 2 *Ld. Raym.* 866.

CXXXVII.

Where goods are delivered to a perſon who is to carry them, or to do ſome thing about them *gratis*, yet if by his ill management the goods are ſpoiled or loſt, it is a good ground for action. 2 *Ld. Raym.* 909.

CXXXVIII.

If a porter puts up the box of a paſſenger behind a ſtage coach, and the maſter as ſoon as he knows of it, ſays, he is already full, and refuſes to take the charge of it, he ſhall not be liable. 1 *Bac. Abr.* 344.

CXXXIX.

A carrier imbezziling goods which he has received to carry to a certain place, is not guilty of felony, for the goods were intruſted to him; but is liable only to a civil action. 2 *Inſt.* 108.

CXL.

But if a carrier open a pack, and take out part of the goods, with intent to ſteal it,

it, he is guilty of felony; for the poſſeſſion of the part, diſtinct from the whole, was gained by wrong, and it was obtained baſely, fraudulently, and clandeſtinely, in hopes to prevent its being diſcovered at all, or fixed upon any one when diſcovered. *Hawk. P. C.* 90. 3 *Inſt.* 107.

CXLI.

If a carrier after he has brought the goods to the place appointed, take them away again ſecretly with intent to ſteal, he is guilty of felony; becauſe the poſſeſſion which he received from the owner being determined, his ſecond taking is in all reſpects as if he were a mere ſtranger. *Ibid.*

CXLII.

So if goods be delivered to a carrier to be carried to a certain place, and he carries them to another place, and diſpoſeth of them to his own uſe. *Kelynge* 82.

CXLIII.

If a box is delivered generally to a carrier, and he accepts it, he is anſwerable though the party did not tell him there is money in it. But if the carrier aſks, and the other ſays no, or if he accepts it conditionally, provided there is no money in it, the carrier is not liable. 1 *Str.* 145.

CXLIV.

If a man delivers a box to a carrier, and he aſks what is in it, and the man tells him a book and tobacco, (as the caſe was) and in truth there is 100*l.* beſides; yet if the carrier is robbed, he ſhall anſwer for the money; for the other was not bound to tell him all the particulars in the box, and it was the buſineſs of the carrier to have made a ſpecial acceptance. 1 *Bac. Abr.* 345.

CXLV.

But if a perſon, being a common carrier, receives by his book-keeper from another man's ſervant, two bags of money ſealed up,

containing, as was told him 200*l.* and the book-keeper gives a receipt for his maſter to this effect "*Received of ſuch a one two bags* "*of money ſealed up, ſaid to contain* 200*l.* "*which I promiſe to deliver on ſuch a day, at* "*ſuch a place, unto ſuch a perſon, he to pay* "*me* 10*s. per cent. for carriage and riſque;*" though the bags contain 400*l.* and the carrier is robbed, he ſhall be anſwerable only for 200*l.* for this is a particular undertaking. 1 *Bac. Abr.* 346.

CXLVI.

If goods delivered to a carrier be ſtolen goods, yet the right owner ſhall not have them without paying the carriage; for he being obliged to receive and carry the goods, the law will not deprive him of the remedy for the reward due for the carriage. 1 *Ld. Raym.* 166.

Vide QUALIFIED PROPERTY, No. 491.

Contract.

CXLVII.

Upon a contract for the ſale of goods of the price of 10*l.* and upwards, no action will lie, unleſs the buyer accept part of the goods ſold, or give ſomething in earneſt to bind the bargain, or ſome note or memorandum in writing be made and ſigned by the parties to be charged with the contract, or their agents. *Stat.* 29. *C.* 2. *c.* 3.

CXLVIII.

In all contracts there muſt be a *quid pro quo*, or one thing for another; but any degree of reciprocity will prevent a contract from being void. *Co. Lit.* 47. *Doct. & Stud. d.* 2. *c.* 24.

CXLIX.

A man by contract, may refer the price of a thing ſold, to the judgment *of a third perſon*, who ſhall reduce it to certainty, and it will be good in law. *Plowd.* 6.

CL.

In contracts, the time is to be regarded in and from which the contract is made; the words ſhall be taken in the common and uſual ſenſe, as they are taken in that place where ſpoken; and the law looks more at the ſubſtance of the contract, and the minds of the parties, than at the form of the words uſed. 1 *Bull.* 175.

CLI.

He that ſpeaks obſcurely or ambiguouſly in contracts, does it at his peril; and ſuch words are to be taken ſtrongly againſt himſelf. *Bac. Elem. R.* 3. *Noy's Max.* 91.

CLII.

If a builder contracts and undertakes to build a houſe, and cover it in within a limited time, and fails to do it, the owner may have an action againſt him, and proving damages, ſhall have ſatisfaction for the delay. *Fitz. Nat. Brev.* 145.

CLIII.

If I contract with a man to give him 10*l.* for ſuch a thing, if I like it on ſeeing it: this bargain is ſaid to be perfect at my pleaſure; though I may not take the thing before I have paid the money; if I do, the ſeller may have an action of treſpaſs againſt me; and if he ſell it to another, I may bring an action on the caſe againſt him. *Noy's Max.* 104.

CLIV.

If a contract which carries intereſt be made in a foreign country, our courts will direct the payment of intereſt, according to the law of that country where the contract was made. 1 *P. Wms.* 395.

Vide SALE of GOODS, and INFANT.

Combination.

CLV.

Combinations among victuallers, *&c.* to raiſe the price of proviſions, are ſeverely puniſhable. *Stat.* 2 *&* 3 *Ed.* 6. *c.* 15.

CLVI.

So among tradeſmen for the advance of their goods. 12 *Mod. Rep.* 248.

CLVII.

So are combinations among artificers to raiſe the price of labour. *Stat.* 2 *&* 3 *Ed.* 6. *c.* 15.

Conſpiracy.

CLVIII.

A conſpiracy of the journeymen in any trade is illegal, though the matter about which

which they conſpired, is lawful for them or any of them to do, if they had not conſpired to do it. 8 *Mod. Rep.* 10.

CLIX.

So in regard to every other conſpiracy; and a bare conſpiracy to do any lawful act to an unlawful end is a crime, though no act was done in conſequence thereof. 8 *Mod. Rep.* 321.

Compounding Informations.

CLX.

Compounding informations upon penal ſtatutes, ſubjects the offender to a forfeiture of 10*l.* to ſtand in the pillory two hours, and to be for ever diſabled to ſue upon any popular or penal ſtatute. *Stat.* 28 *Eliz. c.* 5.

Copyright.

CLXI.

An author and his aſſigns, have the ſole liberty of printing and reprinting his works for

for the term of fourteen years; and if at the end of that term the author is living, the right returns to him for another term of the ſame duration; provided he regiſters his book at Stationers'-Hall, where he muſt alſo depoſit nine copies for the uſe of the Univerſities. *Stat.* 8 *Ann. c.* 19. 15 *Geo.* 3. *c.* 53.

CLXII.

So the inventors of prints and engravings have the privilege of a term of twenty-eight years. *Stat.* 8 *Geo.* 2. *c.* 13. 7 *Geo.* 3. *c.* 38.

But in both theſe caſes, if the right is infringed upon, the action muſt be brought within three months.

Corporations.

CLXIII.

In corporations, where the offence of a member has no relation to his office or franchiſe, it can be no cauſe of forfeiture, and

and the corporation has no juriſdiction. 11 *Rep.* 98.

Debtor and Creditor.

CLXIV.

Where a debtor owes money to a creditor on ſeveral accounts, he may pay part and apply it to any debt; but if the money is paid indefinitely, the creditor has his election to declare on what account he received it. 8 *Mod. Rep.* 236.

CLXV.

Deeds of gift, grants, *&c.* made with intent to defeat creditors of their juſt debts, are void as againſt ſuch creditors. And gifts made in ſecret are liable to ſuſpicion of fraud. *Stat.* 13 *Eliz. c.* 5. 3 *Rep.* 80.

CLXVI.

Stoppage and ſetting off of mutual debts is equivalent to actual payment, and a balance

lance ſhall be ſtruck as in equity and juſtice it ought to be. 2 *Burr.* 820.

Vide DEED, No. 187, 188. ATTACHMENT, No. 45. and EXECUTORS.

Deed.

CLXVII.

There are three things eſſential to a deed; writing in paper or parchment, ſigning and ſealing, and delivery, *Noy's Max.* 53.

CLXVIII.

Every deed, *primâ facie*, is ſuppoſed to be made the day it bears date. 3 *Lev.* 348.

CLXIX.

When a deed is delivered, it takes effect from the delivery, and not from the date. 2 *Rep.* 5.

CLXX.

If another man ſeels a deed, yet if the party delivers it himſelf, he thereby adopts the

the ſealing. *Co. Lit.* 36. And by a parity of reaſoning the ſigning alſo, and makes them both his own. 2 *Black. Com.* 307.

CLXXI.

There muſt be witneſſes to teſtify the ſealing and delivery of a deed. 10 *Rep.* 93.

CLXXII.

If a deed or bond is without date, or hath a falſe or impoſſible date, it is good, for the date of the bond or deed is not of its ſubſtance. 2 *Rep.* 5.

CLXXIII.

The actual delivery of a deed or writing to the party, is good without any words of delivery. 9 *Rep.* 136, 137.

CLXXIV.

If a party to a deed deſires it to be read to him, and it is not, nor the true effect declared, though he execute it, the deed is void as to him. 2 *Rep.* 9.

CLXXV.

Reading a deed falſely to the perſon who is to execute it, will make it void. *Noy's Max.* 56.

CLXXVI.

A deed, wherein a conſideration of money is acknowledged to be paid, regularly ſhould not be executed, before the money mentioned in the acquittance is actually paid.

CLXXVII.

If a perſon is compelled by unlawful detention, or for fear of impriſonment, to enter into a bond, deed, *&c.* ſuch compulſion will invalidate it. *Co. Lit.* 253.

CLXXVIII.

If a man threaten another, and thereby prevails with him to make a deed or bond to a third perſon, it ſhall be equally void as if ſuch third perſon had made the threatening. 2 *Rep.* 9.

CLXXIX.

If a perſon menace me to make a bond for 20*l.* and I tell him that I will not comply with it, but that I will give him a bond for 10*l.* this ſhall be judged by compulſion, and is void. *Bacon Elem. R.* 22.

CLXXX.

If a condition of a bond or recognizance become impoſſible, by the act of God, of the law, or of the perſon to whom it is made, the obligation is ſaved, and he ſhall have no advantage thereof. *Co. Lit.* 206.

CLXXXI.

A deed is make void by raſure, interlining, or other alteration in any material part, unleſs a memorandum be made thereof at the time of the execution and atteſtation. 11 *Rep.* 27.

CLXXXII.

A deed altered in an immaterial part by the hand of a ſtranger, is not vitiated thereby. 2 *Stra.* 760.

CLXXXIII.

If a ſeal is broken off a deed, it is made void. 5 *Rep.* 23.

CLXXXIV.

But if two perſons execute a deed, and the ſeal of one of them is broken off, it ſhall not make it void againſt the other. *Ibid.*

CLXXXV.

A deed ſhall never be void through ambiguity, where the words may be applied to any intent. *Plowd.* 160.

CLXXXVI.

Such conſtruction ſhall be made of a deed, as that it may agree with the rule of law, and the intent of the parties, and that all the deed may ſtand together. 7 *Rep.* 42.

CLXXXVII.

Deed made upon *good* conſideration, ſuch as that of blood or of natural love and affection, are conſidered as merely voluntary, and are frequently ſet aſide in favour of creditors. 2 *Black. Com.* 297.

CLXXXVIII.

But not ſo in caſe of a *valuable* conſideration, ſuch as money, marriage, or the like, which the law eſteems an equivalent given for the grant. *Ibid.*

CLXXXIX.

All gifts, grants, or deeds, made by an infant, which do not take effect by delivery of his hand, are void; but all gifts, grants, or deeds, which do take effect by delivery of his hand, are voidable by himſelf, his heirs, and thoſe who have his eſtate. *Perk.* tit. *Grants*, 3 *Burr.* 1794.

CXC.

In an action upon a bond or deed, if the plaintiff proves that the witneſſes are dead, beyond the ſeas, or that he has made ſtrict enquiry after them and cannot find them, he ſhall be permitted to prove their hands. *Vin. Abr.* tit. *Ev.* 12. *Theo. of Ev.* 30.

CXCI.

Where two deeds are made, bearing the ſame date, and are both conſiſtent, they are manifeſtly but one agreement, executed by different inſtruments, to anſwer different purpoſes; the internal evidence of the thing itſelf ſpeaks them to be one tranſaction, and the ſame to all intents and purpoſes as if expreſſed in one inſtrument. 1 *Burr.* 60. 127.

Defamation.

CXCII.

Scandalous words, that may endanger a man by ſubjecting him to the penalties of the law:—that may exclude him from ſociety, impair

impair his trade, or affect a peer of the realm, a magiſtrate, or one in public truſt, are actionable; and damages are recoverable, without proving any particular damage to have happened. But the defendant is allowed to juſtify by ſhewing them to be true. *Finch. L.* 185, 186. 1 *Vent.* 60. 4 *Rep.* 13.

Vide LIMITATION, No. 421.

Delivery of Goods.

CXCIII.

If one man delivers goods to another to keep for his uſe, the receiver is not anſwerable, if the goods are ſtolen without any fault in him; neither will common neglect make him chargeable, but he muſt be guilty of ſome groſs neglect. 2 *Ld. Raym.* 909.

Vide SALE of GOODS, and EVIDENCE.

Diſtreſs for Rent.

CXCIV.

An horſe in an inn or a farrier's ſhop:—materials in a weaver's ſhop for making cloth:—a garment in the houſe of a taylor, *&c.* may not be diſtrained for rent; for they are ſuppoſed to belong to others. *Cro. Eliz.* 550.

CXCV.

No man may be diſtrained for the inſtruments of his trade or profeſſion; as the axe of a carpenter, books of a ſcholar, *&c.* when other goods may be taken. *Noy's Max.* 10.

CXCVI.

Nothing ſhall be diſtrained for rent, but what may be returned again in as good condition as when it was taken. 3 *Black. Com.* 8.

CXCVII.

Things fixed to the freehold, as cauldrons, windows, doors, chimney-pieces, *&c.* may not be diſtrained. *Co. Lit.* 47.

CXCVIII.

But generally, whatever goods and chattels the landlord finds upon the premiſes (with exceptions like the foregoing): whether they in fact belong to the tenant; to his lodger, or to a ſtranger, they are diſtrainable for rent; and the ſtranger or lodger has his remedy over, by action againſt the tenant. 3 *Black. Com.* 8.

CXCIX.

All diſtreſſes for rent muſt be made by day. *Mirrour, c.* 2. *ſ.* 26.

CC.

Two diſtreſſes cannot be taken for one rent, if there were ſufficient goods when the firſt diſtreſs was made, unleſs too little was taken by miſtake. Otherwiſe it is if there were not ſufficient, 2 *Lutw.* 1532. *Stat.* 17 *C.* 2. *c.* 17. *Burr.* 589.

CCI.

The landlord may diſtrain any goods of his tenant carried off the premiſes clandeſ-

tinely, wherever he finds them, within thirty days after, unleſs they are *bonâ fide* ſold for a valuable conſideration. *Stat.* 11 *Geo.* 2. *c.* 19.

CCII.

All perſons privy to, or aſſiſting in ſuch fraudulent conveyance, ſhall forfeit double the value to the landlord. *Ibid.*

CCIII.

The landlord may not enter into the tenant's houſe to take a diſtreſs, unleſs the doors are open. 2 *Bac. Abr.* 111.

CCIV.

But if the outer door of an houſe be open, he may break an inner door to take a diſtreſs. *Caſes temp. Ld. Hardw.* 168.

CCV.

A landlord may by the aſſiſtance of the peace officer of the pariſh, break open in the day time, any place whither the goods have been fraudulently removed and locked up to prevent a diſtreſs; oath being firſt made, in caſe

eaſe it be a dwelling houſe, of a reaſonable ground to ſuſpect that ſuch goods are concealed therein. *Stat.* 11 *Geo.* 2. *c.* 19.

CCVI.

If a landlord comes into a houſe, and ſeizes upon ſome goods as a diſtreſs, in the name of all the goods in the houſe, that will be a good ſeizure of all. 6 *Mod. Rep.* 215.

CCVII.

Diſtreſſes muſt be proportioned to the rent due; for if a man take a great and unreaſonable diſtreſs, he is liable to an action. 2 *Inſt.* 107.

CCVIII.

The things diſtrained muſt be taken to ſome pound, and there impounded by the taker; but any part of the premiſes upon which ſuch diſtreſs is taken, may be uſed as a pound for that purpoſe. *Stat.* 11 *Geo.* 2. *c.* 19.

Vide INNKEEPER, No. 321.

CCIX.

A tender upon the premiſes before the diſtreſs is taken, makes the diſtreſs wrongful:—a tender after the diſtreſs and before the impounding; makes the detainer wrongful; but a tender after the impounding makes neither the one nor the other wrongful, for it comes too late. 8 *Rep.* 147.

CCX.

A tenant may lawfully reſcue goods in their way to the pound, if they were unlawfully taken; as if no rent were due, *&c. Co. Lit.* 160, 161.

CCXI.

But if they are once impounded, though taken without cauſe, the owner may not break the pound and take them out; for they are then in the cuſtody of the law. *Co. Lit.* 47.

CCXII.

A diſtreſs of houſehold goods or other dead chattels, which are liable to be ſtolen

or

or damaged by the weather, muſt be impounded in a covered pound, otherwiſe the diſtrainer muſt anſwer for the conſequences. *Co. Lit.* 47.

CCXIII.

In all caſes of diſtreſs for rent, if the tenant or owner do not within five days after the diſtreſs taken, and notice thereof given him, replevy the ſame with ſufficient ſecurity, the landlord with the ſheriff ſhall cauſe it to be appraiſed, and ſell it towards ſatisfaction of the rent and charges, rendering the overplus, if any, to the owner. *Stat.* 2 *W. & M. c.* 5.

Vide LANDLORD and TENANT. No. 394.

Diſturbance.

CCXIV.

A perſon making a great noiſe in the night to the diſturbance of the neighbourhood, is fineable. 1 *Stra.* 704.

Drunkenneſs.

CCXV.

Although a drunken man is *non compos mentis*, yet his drunkenneſs ſhall not extenuate, but aggravate his offence. 4 *Rep.* 125.

Employment.

CCXVI.

If one man employs another to perform any work, or to tranſact any buſineſs for him, the law implies that the employer undertook to pay the perſon employed, ſo much as his labour deſerved. 3 *Black. Com.* 162.

CCXVII.

Every one who undertakes any office, truſt, duty, or employment, is in law underſtood to contract for the performance with diligence, ſkill, and integrity. And if by his deficiency any injury ſhould ariſe, the law gives remedy in damages. *Ibid.* 165.

CCXVIII.

But if I employ a man to tranſact concerns different from thoſe of his common profeſſion or buſineſs, the law will not charge him with a general undertaking to perform them well, but a ſpecial agreement is neceſſary. *Ibid.* 166.

Evidence.

CCXIX.

Books of account or ſhop books, may be given in evidence, if the ſervant who was accuſtomed to make the entries is dead; but his hand-writing muſt be proved. 2 *Salk.* 690. 1 *Ld. Raym.* 732.

CCXX.

If a porter who carries out goods for his maſter, enters the delivery in a book and ſigns it, and afterwards dies; upon proof of his hand the book ſhall be admitted good evidence of delivery. 1 *Salk.* 285.

CCXXI.

But theſe proofs are only admitted in ſuch tranſactions as happened within one year of the action; except in caſes between merchant and merchant, merchant and tradeſman, and tradeſman and tradeſman, for any thing within the compaſs of their reſpective trades and merchandize. *Stat. 7 Jac. 1. c.* 12.

CCXXII.

But if the ſervant be living, he may only have recourſe to ſhop books, *&c.* to refreſh his memory. *3 Black. Com.* 368.

CCXXII.

Though a ſhop book is not evidence for a tradeſman, yet it is good evidence againſt him, or for a ſtranger. *1 Ld. Raym.* 745.

CCXXIV.

The bare circumſtance of being the factor, does not incapacitate a man from being evi-

dence

dence in a cauſe. Otherwiſe it is if he be intereſted. 11 *Mod. Rep.* 226.

CCXXV.

In caſes where writings have been loſt by burning of houſes, by rebellion, or where robbers have deſtroyed them, or the like, the law in ſuch caſes of neceſſity allows them to be proved by witneſſes. *Jenk.* 19. *Wood's Inſt.* 595.

CCXXVI.

Bonds and deeds executed in the *Eaſt Indies*, when the ſubſcribing witneſſes reſide there, are made evidence in *Great Britain*, on proof of the hand-writing of the parties and of the witneſſes. *Stat.* 26 *Geo.* 3. *c.* 57.

CCXXVII.

If a man deſtroys a thing that is deſigned to be evidence againſt himſelf, a ſmall matter will ſupply it. Therefore if he tears his own note ſigned by him, a copy thereof ſworn to, may be admitted to be good evidence to prove it. *Ld. Raym.* 731.

CCXXVIII.

One witneſs, if credible, is ſufficient evidence to a jury of any ſingle fact. *Gilb. Law of Ev.* 150.

CCXXIX.

It is a general rule, in all caſes civil and criminal, that the beſt evidence that may be had, or that the nature of the thing will bear, is to be given. *Ibid.* 4.

CCXXX.

Compariſon of hand-writings is evidence in civil, but not in criminal, caſes. *Ibid.* 54.

CCXXXI.

The atteſtation of a witneſs muſt be to what he knows, and not to that only which he hath heard; for a mere hearſay is no evidence. *Ibid.* 152.

CCXXXII.

Yet it may corroborate a witneſs's teſtimony, to ſhew that he affirmed the ſame thing

thing before on other occaſions, and that he is ſtill conſiſtent with himſelf. *Ibid.* 153.

CCXXXIII.

Preſumptions are only to be relied on till the contrary be actually proved. *Co. Lit.* 373.

CCXXXIV.

Violent preſumptions are, where thoſe circumſtances appear which *neceſſarily* attend the fact, and are many times equal to full proof. *Gilb. Law of Evid.* 160.

CCXXXV.

Probable preſumptions, ariſe from ſuch circumſtances as *uſually* attend the fact, and have their due weight. 3 *Black. Com.* 371.

CCXXXVI.

Light or raſh preſumptions, have no weight nor validity at all. *Gilb. Law of Evid.* 160.

Execution.

CCXXXVII.

Goods of a ſtranger, goods pawned, things annexed to the freehold, or goods bought *bonâ fide* depending the action, are not ſubject to be taken in execution. *Wood's Inſt.* 608.

Vide LANDLORD and TENANT, No. 395, 396.

Executors and Adminiſtrators.

CCXXXVIII.

All perſons that are capable of making wills are capable of being executors, and many more, as married women, perſons under age, or even infants unborn. 2 *Black. Com.* 503.

CCXXXIX.

But no infant can act as executor, till the age of ſeventeen years. *Went. Off. Ex. c.* 18.

CCXL.

If the teſtator makes an incomplete will without naming any executors, or if he names incapable perſons, or the executors named refuſe to act, the ordinary will grant letters of adminiſtration, with the teſtament annexed, to ſome other perſon. 1 *Roll. Abr.* 907. *Comb.* 20.

CCXLI.

If the huſband die inteſtate, the ordinary will grant adminiſtration of his effects to the widow, or to the next of kin; but he may grant it to either, or both at his diſcretion. *Cro. Car.* 106. 1 *P. Wms.* 381. 1 *Salk.* 36. 1 *Stra.* 532. *Stat.* 29 *C.* 2. *c.* 3.

CCXLII.

Among the kindred, thoſe are to be preferred that are neareſt in degree to the inteſtate; but of perſons in equal degree, the ordinary may take which he pleaſes. *Stat.* 31 *E.* 3. *c.* 11.

CCXLIII.

The half-blood is admitted to the administration equally with the whole. 1 *Vent.* 425.

CCXLIV.

The degrees of consanguinity are thus reckoned:

1. Children.
2. Parents.
3. Brothers and sisters.
4. Grandfathers and grandmothers.
5. Uncles and aunts, or nephews and nieces.
6. Cousins. *Godolph. p.* 2. *c.* 34. 2 *Vern.* 125. *Prec. Ch.* 527. 1 *P. Wms.* 41.

CCXLV.

If none of the kindred will take out administration, a creditor may do it. 1 *Salk.* 38.

CCXLVI.

The interest vested in the executor by the will of the testator, may be continued by the will

will of the ſame executor. So that the executor of an executor, is, to all intents and purpoſes, the executor and repreſentative of the firſt teſtator. *Stat.* 25 *E.* 3. *ſ.* 5. *c.* 5. 1 *Leon.* 375. *Went. Off. Ex. c.* 20.

CCXLVII.

But the executor of an adminiſtrator, or the adminiſtrator of an executor, is not the repreſentative of the firſt teſtator. *Bro. Abr.* tit. *Admin.* 7.

CCXLVIII.

When the courſe of repreſentation from executor to executor, is interrupted by an adminiſtrator, it is neceſſary for the ordinary, to commit adminiſtration of the goods of the deceaſed not adminiſtered, to ſome other perſon. *Went. Off. Ex.* 379.

CCXLIX.

Executors may execute, releaſe, ſell or be ſued, before the probate of the will is had; they may alſo commence an action, but they cannot continue it, becauſe the probate of the

the will muſt be brought into court before the defendant is bound to plead. *Went. Off. Ex. c.* 3.

CCL.

But an adminiſtrator may do nothing, till letters of adminiſtration are iſſued. 2 *Black. Com.* 507.

CCLI.

If a man owes me money upon bond and I make him my executor and die, he is releaſed from his obligation. 8 *Rep.* 136.

CCLII.

So where the debt is not upon bond. *Went. Off. Ex. c.* 2.

CCLIII.

If a ſtranger takes upon him to act as an executor without juſt authority, he is called in law an executor of his own wrong, and is liable to all the trouble of an executor without any of its advantages. 5 *Rep.* 33.

CCLIV.

But merely doing acts of neceſſity and humanity, as locking up the goods, or burying the corps of the deceaſed, will not charge a man as executor of his own wrong. *Dyer* 166.

CCLV.

An executor or adminiſtrator, ſhould bury the dead in a manner ſuitable to the eſtate he leaves; but if he be extravagant it ſhall only be prejudicial to himſelf, not to the creditors or the legatees. 1 *Salk.* 296. *Godolph. p.* 2. *c.* 26.

CCLVI.

Funeral expences are allowed, previous to all other debts and charges. 3 *Inſt.* 202.

CCLVII.

If all the goods of the deceaſed be within the ſame dioceſe, a probate before the ordinary, or an adminiſtration granted by him, is ſufficient. 4 *Inſt.* 335.

CCLVIII.

But if the deceaſed had effects to the value of 5*l.* (or in caſe of *London* of 10*l.*) in two diſtinct dioceſes, then the will muſt be proved, or adminiſtration taken out, before the metropolitan of the province. *Ibid.*

CCLIX.

In payment of the debts of the deceaſed, the executor or adminiſtrator muſt obſerve the rules of priority; otherwiſe on a deficiency of aſſets, if he pays thoſe of a lower degree firſt, he muſt anſwer the higher out of his own eſtate. *Went. Off. Ex. c.* 12.

CCLX.

The order for payment is,

1. Debts due to the king. 1 *And.* 129.
2. Money due for poor's rates, and for letters to the poſt-office. *Stat.* 17 *Geo.* 2. *c.* 38. 9 *Ann. c.* 10.
3. Debts of record, as judgments, ſtatutes, and recognizances. 4 *Rep.* 60. *Cro. Car.* 363.

4. Debts

4. Debts due on ſpecial contract; as for rent, upon bonds, covenants, and the like. *Went. Off. Ex. c.* 12.

5. Debts on ſimple contract; as promiſſory notes, verbal promiſes, ſervants wages, *&c. Ibid.*

CCLXI.

But by the cuſtom of *London*, the executor or adminiſtrator of a citizen, is bound to pay money due upon a contract of the inteſtate, whether he be a citizen or a ſtranger, as well as if it were by bond. 5 *Rep.* 83. *Wentw. Off. Ex.* 369.

CCLXII.

Among debts of equal degree, the executor or adminiſtrator is allowed to pay himſelf firſt. 1 *Rol. Abr.* 922. *Plowd.* 543.

CCLXIII.

And if no ſuit is commenced againſt him, he may pay any one creditor in equal degree, his whole debt, though he has nothing left for the reſt. *Dyer* 32. 2 *Leon.* 60.

CCLXIV.

After the debts, the legacies are to be paid so far as the assets will extend; but in case of deficiency they must be paid proportionably, unless they are specific (as an horse or a piece of plate, &c.); and the executor or administrator may not give himself the preference. 2 *Vern.* 111. 434. 2 *P. Wms.* 25.

CCLXV.

In case of a surplus after payment of debts and legacies, and where it appears on the face of the will (by means of a legacy or otherwise), that the testator intended his executor should not have the residue, it shall go to the next of kin. 2 *Black. Com.* 514.

CCLXVI.

The surplusage of the effects of intestates shall after the expiration of a year be thus distributed.

One

One third to the widow, and the reſidue in equal proportions to his children, or if dead to their repreſentatives, *i. e.* their lineal deſcendants.

But if no children or repreſentatives, then a moiety to the widow, and a moiety to the next of kindred in equal degree, and their repreſentatives.

If the ſon dies without wife or iſſue, the father ſucceeds to all his perſonal effects, in excluſion of brothers, ſiſters, *&c.*; but if the father be dead and the mother living, ſhe and each of the brothers and ſiſters ſhall divide the effects in equal proportions. If neither father nor mother be living, then the brothers and ſiſters ſucceed, and ſo on according to the degrees of conſanguinity, which are reckoned by the rules laid down in No. 221. *Stat.* 22 & 23 *C.* 2. *c.* 10. 29 *C.* 2. *c.* 3. 1 *J.* c. 17. *Raym.* 496. 1 *Ld. Raym.* 571.

CCLXVII.

But no repreſentatives are admitted among collateral relations, further than the children of the inteſtate's brothers and ſiſters. *Stat.* 22 & 23 *C.* 2. *c.* 10. 29 *C.* 2. *c.* 3. 1 *Jac. c.* 17. *Raym.* 496. 1 *Ld. Raym.* 571.

CCLXVIII.

The cuſtoms of *York*, *London*, and all other places that have peculiar cuſtoms of diſtributing the effects of inteſtates, are excepted from the foregoing rules. *Ibid.*

CCLXIX.

In the city of *London*, the province of *York*, and in *Scotland*, the effects of inteſtates, after payment of debts, are divided thus;

If the deceaſed leaves a widow and children, his ſubſtance (deducting for the widow's apparel and the furniture of her bed-chamber) is divided into three parts; one of which belongs to the widow, another to the children, and a third to the adminiſtrator. 2 *Salk.* 426.

It

If only a widow, or only children, they ſhall in either caſe take one moiety, and the adminiſtrator the other. 1 *P. Wms.* 341.

If neither widow nor child, the adminiſtrator ſhall have the whole. 2 *Show.* 175.

The adminiſtrator's part is called the *dead man's part*, and this is divided by the ſtatute, as the ſurpluſage of inteſtate's effects in general are. 1 *Jac.* 2 *c.* 17.

So that if a man dies leaving 1800*l.* perſonal eſtate, with a widow and two children, his eſtate ſhall be divided into eighteen parts; whereof the widow ſhall have eight, ſix by cuſtom and two by ſtatute; and each of the children ſhall have five, three by cuſtom and two by ſtatute.

If he leaves a widow and one child, ſhe ſhall ſtill have eight parts as before, and the child ſhall have ten; ſix by cuſtom and four by ſtatute.

If he leaves a widow and no child, the widow ſhall have three fourths of the whole, two by cuſtom and one by ſtatute; and the remaining fourth ſhall go by the ſtatute to the next of kin. 2 *Black. Com.* 518.

If a woman before her marriage with a freeman of *London* accepts of a ſettlement upon her, to take effect after her huſband's death in caſe ſhe ſurvives him, of his perſonal eſtate, (without taking notice of the cuſtom of *London*) ſhe is thereby barred of her cuſtomary part of his perſonal eſtate; but ſhe ſhall have her ſhare of the dead man's part unleſs there is a ſpecial agreement to the contrary. 2 *Vern.* 665. 3 *P. Wms.* 16.

If the father in his life-time advanced any of the children with a ſum of money (leſs than their proportionable part,) that portion ſhall be brought into account (or as it is called *hotch-pot*) with their brothers and ſiſters, before they can have any benefit

nefit by the cuſtom; but if they are fully advanced, they can take nothing further by the cuſtom. Nothing however ſhall be brought into *hotch-pot* with the mother, for it is intended only to make an equality among the children. 2 *Salk.* 426. 2 *P. Wms.* 527.

CCLXX.

If a freeman of *London* has two ſons, and the eldeſt ſon dies leaving a ſon, and then the freeman dies, the grandchild, though in law a repreſentative of the ſon who never was advanced, has no part by the cuſtom, for the cuſtom of *London* extends only to the children. 1 *P. Wms.* 341. 2 *Salk.* 426.

CCLXXI.

By the cuſtom of *London* the ſhare of the children, (or orphanage part,) is not fully veſted in them till they attain the age of twenty-one years, before which age they cannot diſpoſe of it by teſtament; and if they die under that age ſingle, their ſhare ſhall go to the other children. 2 *Vern.* 558. 1 *Vern.* 89.

CCLXXII.

In the province of *York*, the heir at law who inherits any land, either in fee or in tail, is excluded from any filial portion, or reaſonable part, of the perſonal eſtate. 2 *Burn's Eccleſ. Law.* 754.

CCLXXIII.

But in *London*, the real eſtate is out of the cuſtom, and is no bar to the orphanage part, nor can it be brought into *hotch-pot.* 1 *Vern.* 216.

CCLXXIV.

Any perſon that is intitled to the diſtribution of inteſtates' effects, is by conſequence intitled to ſue the adminiſtrator in the eccleſiaſtical court, to make good his account by proof and examination on oath. *Wood's Inſt.* 328. *Wentw. Off. Ex.* 380.

CCLXXV.

No action can be brought to charge an executor or adminiſtrator, upon any verbal promiſe,

promiſe, to anſwer the debt or damages of his teſtator from his own eſtate; but if he has ſigned a memorandum or note in writing to that effect, or has authoriſed ſome other perſon to do it for him, he is chargeable. *Stat.* 29 *C.* 2. *c.* 3.

CCLXXVI.

If a perſon in his laſt ſickneſs apprehending himſelf near his diſſolution delivers, or cauſes to be delivered, to another, the poſſeſſion of any perſonal goods, bonds, or bills drawn on his banker, *&c.* to keep in caſe of his deceaſe, and dies, the aſſent of the executor is not neceſſary to enable him to keep them; yet this gift ſhall not ſtand againſt creditors. *Prec. Chanc.* 269. 1 *P. Wms.* 406. 441. 3 *P. Wms.* 357.

CCLXXVII.

If an executor have a legacy left him by his teſtator, and refuſeth to ſtand to the executorſhip, he ſhall loſe his legacy; unleſs from conſanguinity, or other like conſideration, it is probable that the teſtator would

have given the legacy, though he did not perform the will. *Wentw. Off. Ex.* 435.

Vide LAGACY, and WILL.

Factor.

CCLXXVIII.

If a man make another his factor to buy goods for him, the employer ſhall be charged by his contract, though the goods come not to his poſſeſſion. *Noy's Maxims*, 17.

CCLXXIX.

Every factor of common right is to ſell for ready money; but if he be a factor in a ſort of dealing or trade, where the uſage is for factors to ſell on credit: there, if he ſells to a perſon of good credit at that time, and he afterwards becomes inſolvent, the factor is diſcharged. Otherwiſe it is, if he ſell to a man notoriouſly diſcredited at the time of the ſale. 12 *Mod. Rep.* 514.

CCLXXX.

Where a factor upon the ſale of goods takes the riſque of the purchaſer's ſolvency upon himſelf, his principal may, though the goods were ſold in the factor's name, maintain an action againſt the purchaſer, if notice had been given of the property before payment made to the factor.

CCLXXXI.

Though a factor has power to ſell, and thereby to bind his principal, yet he cannot bind nor affect the property of the goods, by pledging them as a ſecurity for his own debt, though there is the formality of a bill of parcels and a receipt. 2 *Stra.* 1178.

CCLXXXII.

Where a merchant conſigns goods to a factor in *London*, the factor can have no property in ſuch goods, neither will they be affected by a bankruptcy. 3 *P. Wms.* 186.

CCLXXXIII.

If a factor or ſuch like accountant, be robbed without his default or negligence, he ſhall be diſcharged thereof upon his account, unleſs there is a ſpecial agreement to the contrary. *Co. Litt.* 89.

CCLXXXIV.

A factor to whom a balance is due, has a lien upon all good of his principal, ſo long as they remain in his poſſeſſion. 1 *Burr.* 494.

Finding.

CCLXXXV.

If one man find the goods of another, and take them into his poſſeſſion, and they are afterwards loſt or hurt by his negligence, he is chargeable to the owner. *Noy's Max.* 92.

Vide QUALIFIED PROPERTY, No. 492, and BANKER, No. 91.

Fire.

CCLXXXVI.

If a fire happen in a ſtreet, a man may juſtify pulling down the wall or houſe of another perſon, to prevent its ſpreading. *Bac. Elem. R.* 5.

CCLXXXVII.

If a fire happens through the negligence of any ſervant, he ſhall forfeit 100*l.* to be diſtributed among the ſufferers; and in default of payment he ſhall be committed to ſome workhouſe for hard labour during eighteen months. *Stat.* 6 *Ann. c.* 31.

CCLXXXVIII.

Neither a bare intention to burn a houſe, nor even an actual attempt to do it by putting fire to part of a houſe, will amount to felony, if no part of it be burnt; but if any part of the houſe be burnt the offender is

guilty of felony, notwithſtanding the fire be afterwards put out, or go out of itſelf. 1 *Hawk. P. C. c.* 39.

CCLXXXIX.

If a man maliciouſly intending to burn one perſon's houſe, happens thereby to burn the houſe of another, it is certain that he may be indicted as having maliciouſly burned the houſe of the other; for where a felonious deſign againſt one man, miſſeth its aim and takes effect upon another, it ſhall have the like conſtruction, as if it had been levelled againſt him who ſuffers by it. *Ibid.*

Forfeiture.

CCXC.

It is a ſtanding rule in equity, that a forfeiture ſhall not bind, where the thing may be done afterwards, or any compenſation may be made for it. 2 *Vent.* 352.

CCXCI.

All ſuits, indictments, and informations, where the forfeiture is to the crown and a ſubject, muſt be ſued within one year after the offence is committed, unleſs where any other time is ſpecially limited by ſtatute. *Stat.* 31 *Eliz. c.* 5.

Gaming.

CCXCII.

If any perſon by playing or betting loſe more than 100*l.* at one time, he is not compellable to pay the ſame. *Stat.* 16 *Car.* 2. *c.* 7.

CCXCIII.

If any perſon aſſault and beat, or challenge to fight, any other perſon, on account of any money won by gaming, playing, or betting, he ſhall forfeit all his goods, chattels, and perſonal eſtate whatſoever, and ſhall ſuffer impriſonment for two years. *Stat.* 9 *Ann. c.* 14.

Vide BILLS of EXCHANGE, No. 109.

Grant.

CCXCIV.

A bare poſſibility of an intereſt which is uncertain, is not grantable. 4 *Rep.* 66.

CCXCV.

Conſtruction of grants ſhall be made according to the intention of the parties. *Co. Lit.* 313.

CCXCVI.

In the grant of a thing, all things neceſſary for the obtaining it are included. *Ibid.* 56.

CCXCVII.

Where a grant is uncertain and the words ambiguous, it ſhall be taken moſt ſtrongly againſt the grantor. *Ibid.* 27.

Vide WILL, No. 591.

Hiring.

CCXCVIII.

If a man let out goods to another for hire, the perſon hiring is bound to take the utmoſt care, and to return them when the time for which they were hired is expired. 2 *Ld. Raym.* 909.

Vide LENDING.

Horſes.

CCXCIX.

Every horſe for ſale, muſt be openly expoſed for one whole hour together, between ten in the morning and ſunſet, in the public place, and at the uſual time for ſuch ſales; and afterwards brought by both buyer and ſeller, to the book-keeper of the fair or market that toll may be paid if due; and if not, one penny to the book-keeper, who ſhall enter down the price, colour, and marks,

marks, of the horſe, with the names, additions, and abodes, of the buyer and ſeller. Nor ſhall ſuch ſale take away the property of the owner, if within ſix months after the horſe is ſtolen, he puts in his claim before ſome magiſtrate where the horſe ſhall be found, and within forty days more, proves it to be his property, by the oath of two witneſſes, and tenders to the perſon in poſſeſſion, ſuch price as he *bona fide* paid for him in the open market. But in caſe any of theſe points are not obſerved, ſuch ſale is utterly void, and the owner ſhall not loſe his property; but at any diſtance of time he may ſeize, or bring an action for his horſe wherever he happens to find him. *Stat.* 2 *P. & M. c.* 7. 31 *Eliz. c.* 12.

CCC.

If my horſe is taken away, and I find him in a fair, a common, or a public inn, I may lawfully ſeize him to my own uſe; but I cannot juſtify breaking open a public ſtable, nor entering the grounds of a third perſon to take him, except he be feloniouſly ſtolen. *Stat.* 2 *P. & M. c.* 7.

CCCI.

If a man takes a horſe to graſs at 2*s. per* week, without any ſpecial promiſe to keep, or re-deliver him ſafe, and he is ſtolen, the owner ſhall not have an action. *Moore* 543. *Plowd.* 720.

Vide INN-KEEPER, and NUISANCE, No. 473.

Huſband and Wife.

CCCII.

Marriage is an abſolute gift of all perſonal effects *in poſſeſſion* of the wife, and in her own right, to the huſband; but if they be in action only, as debts upon bond, con- or otherwiſe, the huſband ſhall not have them, unleſs he and the wife recover them: for in caſe of his death they continue to be her property, and in caſe of her's, he can only have them as he is intitled to be her adminiſtrator. *Co. Lit.* 351.

CCCIII.

If a woman indebted takes huſband, it is then the debt of the huſband and wife, and both are to be ſued for it; but after the death of the wife, the huſband is not liable, unleſs judgment is obtained againſt them both during marriage, or, it is rent in arrear. *Pract. Reg.* 105.

CCCIV.

Where a married woman buys things for her neceſſary apparel, diet, &c. without her huſband's conſent, it ſhall bind him. 1 *Siderf.* 120. *Alleyn* 61.

CCCV.

But if he forbids particular perſons to truſt his wife, he ſhall not be charged after ſuch prohibition. 1 *Vent.* 42.

CCCVI.

But a prohibition in general not to truſt a wife, as by putting her into the gazette, &c. cannot amount to legal notice. *Wood's Inſt.* 60.

CCCVII.

If a wife leaves her husband, they that trust her after her departure is notorious, do it at their peril, and shall not therefore charge the husband. Otherwise it is, if the husband turns her off. 1 *Salk.* 118. 1 *Lev.* 5.

CCCVIII.

An action lies against the husband for goods delivered to his wife, if she usually bought goods, and her husband paid for them; or if it can be intended that the goods came to the husband's use. 1 *Lev.* 4, 5. 2 *Lev.* 16.

CCCIX.

The necessary apparel of the wife, upon the decease of the husband, is protected against the claim of creditors. *Wood's Inst.* 63.

CCCX.

A woman may be attorney for her husband. *Fitz. Nat. Brev.* 27.

CCCXI.

If the wife lives apart from the husband with a separate maintenance by deed, she may be sued for debt as an unmarried woman may. 1 *Black. Com.* 434.

CCCXII.

A wife being a sole trader, may be sued in *London*, by the custom of the city, without the husband. *Cro. Car.* 69.

Vide BANKRUPT, No. 49, and ARBITRATION and AWARD, No. 41.

Infant.

CCCXIII.

An infant in law, is a person under the age of twenty-one years. *Co. Lit.* 171.

CCCXIV.

Before the age of twenty-one years no person can bind himself, except it be for common

mon neceſſaries, ſuch as eating, drinking, apparel, ſchooling, phyſic, &c. ſuitable to their qualities; but if he bind himſelf *by bond in a penalty* for the payment of theſe, he may afterwards avoid the bond. *Co. Lit.* 171.

CCCXV.

Neceſſaries for an infant's wife are neceſſaries for him; but if provided in order for the marriage he is not chargeable, though ſhe uſes them. 1 *Stra.* 168.

CCCXVI.

But if goods which are not neceſſaries are delivered to an infant, and he after full age ratifies the contract by a promiſe to pay, he is bound. 1 *Stra.* 690.

CCCXVII.

Where an infant makes a leaſe under his hand and ſeal reſerving rent, he may afterwards avoid it; but if he accepts rent upon his coming to full age, this makes the leaſe good. 2 *Lilly's Prac. Reg.* 51.

Vide DEEDS, No. 189. and WILL, No. 576, 577, 578.

Innkeeper.

CCCXVIII.

If an inn-keeper opens his houſe, whether he hangs out a ſign or not, there is in law an implied engagement to entertain all perſons that travel that way; and if he refuſes a gueſt upon pretence that his houſe is full, when it is not, an action lies againſt him. 1 *Vent.* 333. *Dalt. c.* 7.

CCCXIX.

An inn-keeper is not bound to receive the horſe, unleſs the maſter lodge there; nor is he bound to furniſh his gueſts with proviſion unleſs paid for before hand, for he need not truſt. 1 *Hawk. P. C.* 225.

CCCXX.

If a man lies at an inn one night, the inn-keeper may detain the horſe till he is paid for the expences; but if he gives him credit for that time, and lets him depart without payment, he ſhall never afterwards detain the horſe

horſe for *that* expence. 8 *Mod. Rep.* 172. *Str.* 556.

CCCXXI.

An inn-keeper that detains a horſe for his meat cannot uſe him, becauſe he detains him as in cuſtody of the law; and by conſequence the detention muſt be in the nature of a diſtreſs, which cannot be uſed by the diſtrainer. *Bac. Abr.* tit. Inns.

CCCXXII.

By the cuſtom of *London* and *Exeter*, if a man commit an horſe to an inn-keeper, and he eat out his price, the inn-keeper may take him as his own, upon the reaſonable appraiſement of four of his neighbours. But by the general cuſtom of the realm the inn-keeper hath no power to ſell the horſe. *Ibid.*

CCCXXIII.

An inn-keeper is bound to ſecure the goods of his gueſts in the inn, whether they were delivered to him or not; but he ſhall not be charged if the ſervant or companion of the gueſt embezzles them, or if the gueſts leave them in the inn-yard. *Noy's Max.* 93.

CCCXXIV.

The inn-keeper ſhall not anſwer for the horſe that is put to paſture at the requeſt of his gueſt; but if he do it of his own head, he ſhall. *Ibid.*

CCCXXV.

A perſon becomes a gueſt at an inn by leaving his horſe there, becauſe he muſt be fed; otherwiſe it is if he had left a trunk or any other dead thing only. 1 *Salk.* 388.

CCCXXVI.

If a perſon comes to an inn and makes a previous contract for lodging for a ſet time, and does not eat and drink there, he is no gueſt, but a lodger: and as ſuch is not under the landlord's protection. Otherwiſe it is, if he eats and drinks there, or if he pays for diet, though he does not eat it there. 12 *Mod. Rep.* 254.

Vide QUALIFIED PROPERTY, No. 491.

Insurance.

CCCXXVII.

In contracts for insurance, the parties ought to know all the circumstances. 2 *Stra.* 1183.

CCCXXVIII.

In insurances, the strict letter of the contract is not so much to be regarded as the object and intention of it. 3 *Burr.* 1237.

CCCXXIX.

Warranties in policies must be strictly complied with; but representations need only be fair, and substantially true. *Coup.* 785.

CCCXXX.

A stipulation, though written on the margin of the policy, is a warranty, as much as if written on the body of the instrument. *Doug.* 11.

CCCXXXI.

But if on a ſeparate paper, though pinned or wafered to the policy, it is only a repreſentation. 1 *Doug.* 13.

CCCXXXII.

If the inſured repreſent material facts, without knowing them to be true, he takes the riſk of their being ſo on himſelf. 1 *Doug.* 261.

CCCXXXIII.

A repreſentation made to the firſt underwriter extends to all others. 1 *Doug.* 305.

CCCXXXIV.

An underwriter is preſumed to know the nature and peculiar circumſtances of the branch of trade to which the inſurance relates. 1 *Doug.* 510.

CCCXXXV.

Damages happening to periſhable goods from their own nature, are not to be borne by the inſurer.

CCCXXXVI.

No insurance can legally be made on lives or on any other event, except in marine insurances, wherein the party insured hath no interest. *Stat.* 14 *Geo.* 3. *c.* 48.

CCCXXXVII.

In all policies, the name of the party interested must be inserted, and nothing more shall be recovered thereon than the amount of the interest of the insured, except in marine insurances. *Ibid.*

CCCXXXVIII.

All insurances, interest or no interest, or without farther proof of interest than the policy itself, or by way of gaming and wagering, or without benefit of salvage to the insurer, are totally null and void; except upon privateers, or upon ships or merchandize from the *Spanish* or *Portuguese* dominions. *Stat.* 19 *Geo.* 2. *c.* 37.

CCCXXXIX.

An insurance being made without interest, and the premium paid, the insured shall not recover it back. 1 *Doug.* 468.

CCCXL.

So in the case of a re-assurance, void by 19 *Geo.* 2. *c.* 37. 2 *Term. Rep.* 266.

CCCXLI.

No re-assurance is lawful, except the former insurer is insolvent, a bankrupt, or dead; and then it should be expressed in the policy to be a re-assurance. *Ibid.* 1 *Burr.* 490.

CCCXLII.

In the *East India* trade, the lender of money on bottomry, or at respondentia, has alone a right to be insured for the money lent; and the borrower shall (in case of a loss) recover no more upon any insurance, than the surplus of his property above the value

value of his bottomry or reſpondentia. *Stat.* 19 *Geo.* 2. *c.* 37.

CCCXLIII.

If a ſhip is ſeized and condemned by proceſs of law, the property and ownerſhip are deſtroyed, and there is no remedy on the policy of inſurance. 1 *Ld. Raym.* 724.

CCCXLIV.

If a ſhip is inſured under Captain *A. B.* the owners may change the captain without notice to the inſurers. 12 *Mod. Rep.* 325.

CCCXLV.

If goods are ſent on ſhore by the ſhip's boat, it is conſidered as part of the ſhip and voyage, and the inſurer is liable for their ſafety. Otherwiſe it is, if they are delivered from the ſhip into a boat or veſſel by order of the owner. 1 *Stra.* 1236.

CCCXLVI.

If a ſhip is warranted to depart with convoy, it is to be conſidered as under inſurance to

the place of general rendezvous; and if the parties mean to vary the insurance from what is generally understood, they should particularize her departure with convoy, from some specific place. 2 *Stra.* 1251. 1265.

CCCXLVII.

On a warranty to sail from *Jamaica* on or before a day certain, if the ship departs from her port of loading on that day, with all her cargo and clearance on board; and proceeds to the place of rendezvous in the island expecting to find a convoy and proceed immediately, but is detained there by an embargo till after the day, the departure is a compliance with the warranty, though the captain knew of the embargo when he sailed, the embargo being only till convoy shall be ready. 1 *Doug.* 357.

CCCXLVIII.

So if a ship is insured at and from *Jamaica* warranted to sail or to have sailed, on or before a day certain, if she sail on that day, from

from her port of loading with all her cargo and clearances on board, to another part of the iſland for the ſake of joining convoy, that being the uſual place of rendezvous, the warranty is complied with, although ſuch place be out of the direct courſe of the voyage, and the ſhip is detained there, by an embargo, till after the day. *Cowp.* 601.

CCCXLIX.

Yet the ſhip in ſuch caſe would be protected under the words "at *Jamaica*" in ſailing between the two places. *Ibid.*

CCCL.

If a ſhip warranted to ſail on a day certain, gets under ſail on the day, with intent to purſue her voyage, the warranty is complied with, though ſhe ſhould be obliged to put back inſtantly by a ſtorm, an embargo, or an enemy, before ſhe gets out of the harbour. *Ibid.*

CCCLI.

If a ſhip be inſured *from* the port of *London* to *Cadiz*, and before ſhe breaks ground is burnt, the inſurers are not liable; but if the words are *at* or *from* the port of *London*, they are liable. *Molloy*, 292.

CCCLII.

An inſurance made in a foreign country, may be ſued in *England* by the common law, if the aſſurers come here. *Ibid.* 295.

CCCLIII.

An inſurance made on prohibited goods is not binding, unleſs they were prohibited after the inſurance was made; as on wool, &c; for ſuch inſurances would tend to deſtroy trade, which is directly to thwart the true intention of all policies. *Ibid.* 296.

CCCLIV.

An inſurance on a voyage expreſsly prohibited by the laws of this country is void. 1 *Doug.* 254.

CCCLV.

Where the words of the policy are "*the ſhip warranted to depart with convoy*" it ſhall be intended that ſhe ſhall keep with convoy during the voyage, if poſſible, and if ſhe depart wilfully from the convoy it is a fraud; but if having departed with convoy, and by ſtreſs of weather ſhe loſes convoy and is taken, the inſurers are liable. *Carth.* 216. 2 *Salk.* 443.

CCCLVI.

If after a policy of inſurance, a damage happens, and afterwards in the ſame voyage a deviation; yet the aſſured ſhall recover for what happened before the deviation, for the policy is charged from the time of the deviation only. 2 *Salk.* 444.

CCCLVII.

If a ſhip ſail on a voyage different from, although coinciding in part with that in-

ſured, the policy is diſcharged although the loſs happen before the dividing point. 1 *Doug.* 16.

CCCLVIII.

If an inſured ſhip quit the courſe deſcribed in the policy, from neceſſity, ſhe muſt purſue the new voyage of neceſſity, in the direct courſe, and in the ſhorteſt time, otherwiſe the policy will be diſcharged. 1 *Doug.* 284.

CCCLIX.

A deviation from neceſſity, muſt be juſtified both as to ſubſtance and manner. 1 *Doug.* 291.

CCCLX.

It is a general principle that where a riſk has begun, though it ſhould ceaſe immediately, there ſhall be no return of premium. 2 *Doug.* 588.

CCCLXI.

And in all caſes where the riſk never has begun, there ſhall be a return. *Ibid.*

CCCLXII.

If a man pays money on a policy of insurance, supposing a loss where there was none, this shall be money received to the use of the insurer, for which he may maintain an action. *Skin.* 411. 1 *Show.* 156.

CCCLXIII.

In a policy on goods shipped on board a certain ship to return part of the premium "if she sails with convoy and arrives," the arrival of the ship is what is meant, and the full return is to be made on the whole sum insured, though there should be an average loss on the goods. 1 *Doug.* 268.

CCCLXIV.

When a ship is insured against capture for twelve months, at the rate of so much *per* month, making a specified gross sum, though the risk cease before the end of two months by the loss of the ship in a storm, there shall be no apportionment nor return of premium,

the contract being entire. 2 *Doug.* 588. *Cowp.* 666.

CCCLXV.

So if a ſhip is inſured for twelve months for a groſs ſum, warranted free from captures, there ſhall be no apportionment or return, though the riſk ceaſe by the capture of the ſhip before the expiration of the twelve months. 2 *Doug.* 587.

CCCLXVI.

So if there is an inſurance on a ſhip and goods—at and from *A.* to *B.* during her ſtay and trade there, at and from thence to her port or ports of diſcharge in *C.* and at and from thence back to *A.*—it is an intire contract, and if the loſs happen at any time after the commencement of the riſk, there ſhall be no apportionment nor return. 2 *Doug.* 781.

CCCLXVII.

So if there is an inſurance upon a life for a year, with an exception as to ſuicide, and

the hands of juſtice, if the party die in either of thoſe ways within the year, there ſhall be no apportionment nor return. 2 *Doug.* 785.

CCCLXVIII.

But if the policy is "at and from *London* to *Halifax* in *Nova Scotia*, warranted to depart with convoy from *Portſmouth*"—the riſk and contract are deviſeable, and if the ſhip depart from *Portſmouth* without convoy, there ſhall be an apportionment and return of ſo much as was paid for the voyage from *Portſmouth* to *Halifax*, to be aſcertained by the jury; the commencement of any riſk from *Portſmouth*, depending on the condition precedent of a departure from thence with convoy. 2 *Doug.* 587. 790.

CCCLXIX.

So, if the policy is "*at* and from *A*, warranted to ſail on a day certain,"—the riſk and contract are diviſeable, the riſk *from A.* depending on the condition precedent of a departure

parture on the day, and if there is no departure on the day, there ſhall be an apportionment and return. 2 *Doug.* 784. 790.

CCCLXX.

A ſhip and goods being inſured for a voyage, if the ſhip is taken, and re-captured, and after the re-capture, the captain, acting fairly for the benefit of his employers, ſells the ſhip and cargo, and thereby puts an end to the voyage, the inſured may abandon and recover as for a total loſs. 1 *Doug.* 231.

CCCLXXI.

If the voyage is loſt, or not worth purſuing, if the ſalvage is high, if the underwriter will not all events undertake to pay that expence, the inſured may abandon, notwithſtanding a re-capture. 1 *Doug.* 231.

CCCLXXII.

On a repreſentation that a ſhip was ſeen ſafe on ſuch a day, at a certain latitude or point in the voyage, if it turn out that ſhe

had got ſafe to the point repreſented, but was loſt two days before the day mentioned, the difference (though by miſtake) is material and diſcharges the policy. 1 *Doug.* 260.

CCCLXXIII.

Under a warranty, that the ſhip and cargo are neutral property, it is ſufficient if they are ſo when the riſk commences. 2 *Doug.* 732.

CCCLXXIV.

If ſuch a warranty is falſe, though the loſs ſhould not happen in conſequence of the property not being neutral, the policy is void. 3 *Burr.* 1419. 1 *Black.* 427.

CCCLXXV.

The word "ſeamen" in a policy, extends to all the crew, including boys, cook, &c. 1 *Doug.* 11. *Cowp.* 785.

CCCLXXVI.

A conſent to be bound by a verdict, in one of many caſes on the ſame queſtion,

in

in inſtance or otherwiſe, means ſuch a verdict, as the court thinks ought to ſtand as a final determination of the matter. 3 *Burr.* 1477.

Inteſtates.

Vide EXECUTORS and ADMINISTRATORS.

Joint-Holders.

CCCLXXVII.

If a horſe or other perſonal chattel be given to two or more abſolutely, they are joint-holders or tenants thereof; and unleſs the jointure be ſevered, as by one ſelling his ſhare, or the like, the ſurvivor ſhall have it. *Lit. ſ.* 280, 281.

CCCLXXVIII.

But if the jointure be ſevered, and the ſhare be ſold to a ſtranger, the purchaſer and the remaining part owner, ſhall hold it in common without ſurvivorſhip. *Co. Lit.* 188. 193.

Labourers.

CCCLXXIX.

Such labourers and artificers as leave or desert their work unfinished, are punishable by the justices. *Stat.* 5 *Eliz. c.* 4.

CCCLXXX.

All persons who have no apparent means of livelihood, may be compelled to work. *Ibid.*

Vide MASTER and SERVANT. No. 450.

Landlord and Tenant.

CCCLXXXI.

If a man holds a house or land at will, rendering rent quarterly, the landlord may determine his will when he pleases; but if he determines it within a quarter, he shall lose the rent which should have been paid for that quarter. So the lessee may determine

mine it when he pleaſes; but then he muſt pay the quarter's rent. 2 *Salk.* 413.

CCCLXXXII.

But by the cuſtom of *London*, a tenant at will, under the yearly rent of forty ſhillings, ſhall have a quarter's warning; and paying above forty ſhillings, ſhall have half a year's warning. 2 *Siderf.* 20.

CCCLXXXIII.

If the leſſor covenants to repair a houſe but doth not, the leſſee may do it, and withhold as much of the rent as will pay himſelf. 1 *Leon.* 237. *Co. Lit.* 54.

CCCLXXXIV.

Where a houſe is blown down by tempeſt, the law excuſes the leſſee, unleſs there is a covenant to repair and uphold, then he muſt rebuild. *Plowd.* 29.

CCCXXXV.

Removing wainſcot, floors, windows, and other things once fixed to the freehold of a houſe,

a houſe, is waſte, and puniſhable accordingly. 1 *Salk.* 368.

CCCLXXXVI.

But fixtures of vats, coppers, tables, partitions, *&c.* for the convenience of trade, if purchaſed or affixed by the leſſee, may be removed by him, but it muſt be before the expiration of his term. *Ibid.*

CCCLXXXVII.

Every man of common right muſt ſupport his houſe, ſo that it may not be an annoyance to another. 11 *Mod. Rep.* 17.

CCCLXXXVIII.

A tenant may not lawfully remove goods from an houſe before his rent be paid, without leave of his landlord. *Stat.* 11 *Geo.* 2. c. 19.

CCCLXXXIX.

The law allows a landlord to enter a houſe to view repairs, but if he breaks the houſe,

or continues there all night, he is a treſpaſſer, and the law will judge that he entered in for that purpoſe. 8 *Rep.* 146.

CCCXC.

If any tenant for life or years, or other perſon claiming under or by colluſion with him, ſhall wilfully hold the premiſes after the determination of the term, demand made, and notice in writing given, by him to whom the remainder or reverſion belongs, for delivering poſſeſſion, he ſhall pay for the time of ſuch detention at the rate of double the yearly *value*. *Stat.* 4 *Geo.* 2. *c.* 28.

CCCXCI.

In caſe any tenant having power to determine his leaſe, ſhall give notice of his intention to quit the premiſes, and ſhall not deliver up the poſſeſſion at the time contained in the notice, he ſhall thenceforth pay double the former *rent*, for ſuch time as he continues in poſſeſſion. *Stat.* 11 *Geo.* 2. *c.* 19.

CCCXCII.

Landlords who have a right of re-entry for non-payment of rent, may ſerve an ejectment on their tenants when half a year's rent is due, and there is no ſufficient diſtreſs on the premiſes; but upon tender of the rent and coſts within ſix months after, it ſhall be withdrawn. *Stat.* 4 *Geo.* 2. *c.* 28.

CCCXCIII.

Where any tenant upon leaſe at rack-rent ſhall be one year's rent in arrear, and ſhall deſert the demiſed premiſes, leaving them unoccupied ſo that no ſufficient diſtreſs can be had, two juſtices of the peace (after notice affixed to the premiſes without effect) may give the landlord poſſeſſion thereof, and thenceforth the leaſe ſhall be void. *Stat.* 11 *Geo.* 2. *c.* 19.

CCCXCIV.

A landlord may diſtrain for his rent upon a bankrupt's goods, either before or after the aſſignment; but if he neglect to do it, and

and ſuffers them to be removed, he can only come in upon an average with the reſt of the creditors. But if the goods remain on the premiſes he may diſtrain them, even after the meſſenger is in poſſeſſion, or after ſale by the aſſignees. And he is not reſtricted to one year only, as in the caſe of executions, but may diſtrain for his whole arrear. 1 *Atk.* 102, 3.

CCCXCV.

Before the removal of goods taken in execution from the premiſes, the party at whoſe ſuit it is, ſhall pay to the landlord all rent due upon the premiſes, provided it amount to no more than one year's rent; but if it exceed, he may, after paying the landlord one year's rent, proceed to execution. *Stat.* 8 *Ann. c.* 14. *

* But the ſheriff is not obliged to wait and ſee if any body comes and demands the rent, he cannot take notice what arrears there are, but if the landlord comes and acquaints him with it, then and not till then he is obliged to ſee the year's rent ſatisfied, before the goods are removed. *Str.* 97.

CCCXCVI.

And in case of two executions, there shall not be two years rent paid to the landlord, for the intent of the act was to reserve to the landlord only the rent for one year, and it was his own fault if he let it run more in arrear. Therefore one year's rent being paid to the landlord on the first execution, the second execution may proceed. *Str.* 1024.

Vide DISTRESS, LEASE, RENT, and QUALIFIED PROPERTY, No. 491.

Legacy.

CCCXCVII.

If a legatee dies before the testator, it is lapsed legacy, and sinks into the residuum. *P. Wms.* 114.

CCCXCVIII.

Yet there may be a joint legacy, as well as a joint grant; as if *A.* devises 200*l.* a-piece to his children, and if any of them die

die before the age of twenty-one, then his legacy to the ſurviving children. *Ibid.* 113. 115.

CCCXCIX.

If a contingent legacy be left to any one, as *when* he attains, or *if* he attains, the age of twenty-one years, and he dies before that time, it is a lapſed legacy. 1 *Burr.* 327.

CCCC.

A legacy *to be paid* when he attains the age of twenty-one years, is a veſted legacy, and if he dies before that time his repreſentatives ſhall have it. *Ibid.*

CCCCI.

But this is reſtricted to perſonal eſtate; for if the legacy be charged on the real eſtate, *to be paid* when the legatee attains the age of twenty-one years, and he dies before that time, it ſinks into the land, and his repreſentatives ſhall not have it. 1 *Vern.* 204. 321. 2 *P. Wms.* 610.

CCCCII.

A veſted legacy due immediately, and charged on land, or on money in the funds, ſhall carry intereſt from the teſtator's death. 2 *P. Wms.* 26, 27.

CCCCIII.

But if a legacy be given out of a perſonal eſtate generally, and no time of payment mentioned in the will, it ſhall carry intereſt only from the end of the year after the death of the teſtator. 2 *P. Wms.* 26.

CCCCIV.

If a legacy is payable at a certain day, it ſhall carry intereſt from that time if not paid. 1 *Vern.* 262.

CCCCV.

If an executor becomes a bankrupt, a legatee is to be a creditor. 1 *Show.* 223.

CCCCVI.

All legacies given to the witneſſes of a will are void. *Stat.* 25 *Geo.* 2. *c.* 6.

Lending.

CCCCVII.

If I lend goods or chattels to a friend *gratis*, to be uſed by him, the borrower is bound to the ſtricteſt care and diligence, to keep the goods ſo as to reſtore them again to me, becauſe he has a benefit by the uſe of them; and therefore if he is guilty of the leaſt neglect he will be anſwerable. 2 *Ld. Raym.* 909.

CCCCVIII.

If a man borrow or hire a horſe or cart or any other thing, that may be uſed and delivered again, and uſe it for the purpoſe and in the manner intended, and it is injured or deſtroyed without his default, the owner ſhall bear the loſs; but if it is uſed otherwiſe than according to the lending, then the borrower or hirer ſhall be chargeable. *Noy's Max.* 91.

CCCCIX.

If one man intrusts another with money to be put out, without specifying the manner, and the person to whom it is intrusted lends it to a third, then in apparent credit, and takes a proper security as a bond, &c. and the borrower afterwards becomes insolvent, the lender shall not be chargeable. 12 *Mod. Rep.* 509.

Lease.

CCCCX.

An under-lease is not an assignment, to the effect of working a forfeiture under a proviso not to assign. 1 *Doug.* 57. 184.

CCCCXI.

But under a proviso "that the lease shall become void, in case the lessee, his executors or administrators, shall, at and during the said term, set, let, or assign over, the said hereby demised messuage or dwelling

houſe, or any part thereof"—a demiſe by the leſſee's *adminiſtratrix* for a term a day ſhort of the expiration of original leaſe, is bad. 2 *Term. Rep.* 425.

CCCCXII.

A proviſo—that a leaſe ſhall become void upon the leſſee's committing an act of bankruptcy, and being found a bankrupt is good. 2 *Term. Rep.* 133.

CCCCXIII.

When the whole term is made over by the leſſee, although in the deed by which that is done, the rent and a power of entry for non-payment, is reſerved to him, and not to the original leſſor, this is an aſſignment and not an under-leaſe. 1 *Doug.* 187.

CCCCXIV.

What cannot be ſupported as an aſſignment, ſhall be good as an under-leaſe, againſt the party granting it. 1 *Doug.* 188.

CCCCXV.

Where a leaſe is *ipſo facto* void, by the condition or limitation, no acceptance of rent afterwards, can make it have continuance as between the grantor and grantee. 1 *Doug.* 58. *Cro. Eliz.* 220.

CCCCXVI.

Otherwiſe it is of a leaſe *voidable* only. *Ibid.*

Libel.

CCCCXVII.

There are two remedies for libels, one by indictment for the public offence, for every libel has a tendency to a breach of the peace, by provoking the perſon libelled to break it, which offence (in point of law) is the ſame whether the matter be true or falſe, and therefore the defendant is not allowed to juſtify himſelf by alledging the truth. 5 *Rep.* 125.

CCCCXVIII.

The other remedy is an action, which is to repair the party in damages for the injury

done him; and here the defendant may justify himself by shewing the truth of the facts, and that the plaintiff has received no injury. *Hob.* 253. 11 *Mod. Rep.* 99.

Limitation of Actions.

CCCCXIX.

Actions upon the case, except for slander actions of account, except where it is account *current* between merchants: actions of debt, except upon bond: actions of detinue, trover, trespass, and replevin must be brought within *six* years of the cause of action; otherwise the plaintiff cannot recover. *Stat.* 21 *Jac.* 1. *c.* 16.

CCCCXX.

So actions of assault, battery, wounding or imprisonment, must be brought within four years. *Ibid.*

CCCCXXI.

And actions for words ſpoken in defamation, muſt be brought within *two* years, and not after. *Ibid.*

CCCCXXII.

But if the party having cauſe of action be at the time within age, a married woman, *non compos mentis*, impriſoned, or beyond the ſeas, they ſhall be at liberty to bring their action within ſuch limited times, after their coming to age, becoming unmarried, of ſane memory, at large, or returned from beyond the ſeas. *Ibid.*

CCCCXXIII.

It is no plea in bar of the ſtatute of limitations, to ſay that the defendant was beyond ſea, for the plaintiff may outlaw him. 2 *Salk.* 420.

CCCCXXIV.

The ſtatute excepts only accounts which are *current* between merchants, and not any

that are ſtated; and if an action is brought againſt a drawer of a bill for value received, that is no account current, but a ſtated account. 4 *Mod. Rep.* 105.

CCCCXXV.

An acknowledgment of the debt, after the commencement of an action, takes it out of the ſtatute of limitations. 2 *Burr.* 1099.

CCCCXXVI.

An executor requeſted a debtor of his teſtator's, to pay for goods bought above ſix years before; the debtor denied that he bought the goods, but further ſaid, "*prove it and I will pay you.*" The judges gave it as their opinion, "*that if the executor proved the delivery of the goods at any time, the above promiſe was ſufficient to bring the caſe out of the ſtatute of limitations;*" and the delivery having been proved, judgment was given for the plaintiff. 1 *Ld. Raym.* 38. 42. 1 *Salk.* 29.

Maintenance.

CCCCXXVII.

Maintenance, or an officious intermeddling with a ſuit that no way belongs to one, by maintaining or aſſiſting either party with money, to proſecute or defend it, is puniſhable by fine, impriſonment, and a forfeiture of 10*l*. 1 *Hawk. P. C. c.* 83. *Stat.* 32 *H.* 8. *c.* 9.

CCCCXXVIII.

So to bargain with a plaintiff or defendant to divide the land or other matter ſued for, between them, if he prevail at law, whereupon the perſon ſo agreeing is to carry on the ſuit at his own expence, is a ſpecies of maintenance called champerty, and is puniſhable in the ſame manner. *Stat. of Conſp.* 33 *E.* 1. 1 *Hawk. P. C.* 84.

CCCCXXIX.

But a parent may uphold and maintain a child in his law-ſuits without being guilty of maintaining quarrels. 2 *Inſt.* 564.

CCCCXXX.

So a child is juſtifiable in defending the perſon, or maintaining the cauſe of its parents. 2 *Inſt.* 564.

CCCCXXXI.

And the maſter may maintain his ſervant, in an action at law againſt a ſtranger. 1 *Black. Com.* 422.

Market-overt.

CCCCXXXII.

Market-overt (or open) in the country, is only held on the ſpecial days provided for particular towns by charter or preſcription; but in the city of *London* every day except *Sunday* is market day. *Cro. Jac.* 68.

CCCCXXXIII.

The market place ſet a part by cuſtom for the ſale of particular goods, is alſo in the

the country the only market overt; but in *London* every ſhop in which goods are expoſed publicly to ſale is market-overt; though for ſuch things only as the owner profeſſes to trade in. *Godb.* 131. 5 *Rep.* 83. 12 *Mod. Rep.* 521.

Maſter and Servant.

CCCCXXXIV.

If the hiring of a menial ſervant be general, without any particular time or ſpecial agreement, the law conſtrues it to be for a year. *Noy's Max.* 91.

CCCCXXXV.

If a ſervant retained for a year happen within the time of his ſervice to fall ſick, or to be hurt or diſabled by the act of God, or in doing his maſter's buſineſs, yet the maſter muſt not therefore put ſuch ſervant away, nor abate any part of his wages for ſuch time. *Wood's Inſt.* 52.

CCCCXXXVI.

If a ſervant ſhall refuſe to do his ſervice, that is a departure in law, although he ſtill ſtay with his maſter. *Dalt. Juſt.* 187.

CCCCXXXVII.

If a man gives his ſervant authority to ſell goods, and he doth ſo, it is his maſter's ſale by him. *Plowd. Com.* 475.

CCCCXXXVIII.

If a ſervant ſells me goods, and warrants them to be of a certain length or quality, the action lies againſt the maſter only, and not againſt the ſervant. *Noy's Max.* 17.

CCCCXXXIX.

The wrong of the ſervant is looked upon as the wrong of the maſter himſelf:—thus he ſhall never be a gainer by his ſervant's wrong, for no man ſhall be allowed to make advantage of his own wrong. 1 *Black. Com.* 422.

CCCCXL.

The act of a ſervant ſhall not bind the maſter, unleſs he acts by the authority of the maſter, and therefore if a maſter ſends his ſervant to receive money, and the ſervant, inſtead of money, takes a bill, and the maſter as ſoon as he is told thereof diſagrees, he is not bound by the payment; but the maſter's acquieſcence in any ſmall degree will prove his conſent, and that will make the act of the ſervant the act of the maſter. 2 *Salk.* 442. 2 *Ld. Ray.* 928.

CCCCXLI.

If a ſervant who has been uſed to take up caſh for his maſter, is diſcharged, and he afterward takes up caſh before notice is given, or his diſcharge is notorious, the maſter is liable. 12 *Mod. Rep.* 346.

CCCCXLII.

If I pay money to a banker's clerk, or tradeſman's ſervant, the maſter is anſwerable

able though it never come to his hands; but if I pay it to a clergyman's or a phyſician's ſervant, whoſe uſual buſineſs is not to receive it, I muſt pay it over again. 1 *Black. Com.* 422.

CCCCXLIII.

If a ſervant, who had power to draw bills of exchange in his maſter's name, is diſmiſſed from his ſervice, and draws a bill ſo ſoon after that the world cannot take notice of his diſmiſſion, the bill ſhall bind the maſter, unleſs there is any fraud on the part of the holder. 12 *Mod. Rep.* 346.

CCCCXLIV.

If I deal with a tradeſman uſually by myſelf, or conſtantly pay him ready money, I am not anſwerable for what my ſervant takes up upon truſt. Otherwiſe it is if I uſually ſend him upon truſt, or ſometimes upon truſt, and ſometimes with ready money. 1 *Black. Com.* 422.

CCCCXLV.

A wife, a friend, a relation, that uſe to tranſact buſineſs for a man are, with reſpect

to

to this, his ſervants; and the principal muſt anſwer for their conduct, for the law implies that they are under a general command. 1 *Black. Com.* 422.

CCCCXLVI.

If a ſervant, while in his maſter's ſervice, does any damage to a ſtranger; as if a ſmith's ſervant lames a horſe while ſhoeing, the maſter ſhall anſwer for it. *Ibid.*

CCCCXLVII.

Action will lie for inticing or taking away my ſervant out of my ſervice and retaining him. *Fitz. Nat. Brev.* 167.

CCCCXLVIII.

But if a man retain another's ſervant not knowing that he was ſo, no action will lie if he delivers him up upon notice given him. *Ibid.* 168.

CCCCXLIX.

If a man beat my ſervant whereby I loſe his ſervice, I may have an action againſt him and recover damages. 9 *Rep.* 113.

CCCCL.

If any ſervant, workman, or labourer, aſſaults his maſter, his maſter's wife or other perſon that has the direction or ſuperintendance of him, he ſhall ſuffer one year's impriſonment, *&c.* at the diſcretion of the juſtices. *Stat. 5 Eliz. c. 4.*

CCCCLI.

A ſervant may juſtify an aſſault in defence of his maſter; but it has been held that a maſter may not in defence of his ſervant, becauſe he might have an action for the loſs of his time. *1 Salk.* 407.

CCCCLII.

If a ſervant in the night time open the ſtreet door, and let in perſons who rob the houſe, though the ſervant go not out with them, yet it is burglary in him. *2 Stra.* 881.

CCCCLIII.

The inſtant a negro lands in *England* he becomes a freeman, that is, he becomes protected by law in his perſon, and his property; but the law does not diſſolve the obligation of ſervice any more than in regard to apprentices. 2 *Salk.* 666.

Vide NUSANCE, No. 471, and MAINTENANCE, No. 431.

Menace.

CCCCLIV.

If a man threaten and menace another, through fear of which his buſineſs is interrupted, he may have an action againſt him and recover damages. *Finch L.* 202.

Money.

CCCCLV.

Any perſon may cut, break, or deface pieces of ſilver money, ſuſpected to be counterfeit,

terfeit, or diminiſhed otherwiſe than by wearing; but if they afterwards appear to be good, the defacer ſhall take them at their full value. *Stat.* 18 & 19 *W.* 3. *c.* 21.

Neglect or Miſmanagement.

CCCCLVI.

An action for neglect or unſkilful management in a phyſician, ſurgeon, or apothecary lies againſt him, and damages are recoverable. 3 *Black. Com.* 122.

CCCCLVII.

So for an advocate or attorney that betray the cauſe of their client, or being retained neglect to appear at the trial, by which the cauſe miſcarries. *Finch L.* 188.

CCCCLVIII.

Bad practice whether it be for curioſity and experiment or by neglect, is a great miſdemeanor and offence at the common law. 1 *Ld. Raym.* 214.

Nuſance.

CCCCLIX.

An action lies not for a common and public nuſance, for it is indictable; but if any perſon receives hurt or damage in his perſon or property by ſuch nuſance, he may have an action for it and recover damages. 5 *Rep.* 73.

CCCCLX.

Whatever unlawfully annoys or doth damage to another is a nuſance, and may be removed by the party aggrieved, *ſo as he doth no riot in removing it;* but if he remove it, it is not indictable. 5 *Rep.* 101. 9 *Rep.* 55.

CCCCLXI.

If one ſees his neighbour erecting a nuſance, he cannot remove it till it becomes an actual nuſance. 12 *Mod. Rep.* 510.

CCCCLXII.

If a man have lands adjoining to a new built houſe, he may build upon his land, though in carrying up his houſe he darkens his neighbour's windows. Otherwiſe it is if he ſtops *antient* * lights, which is a private nuſance, and he may enter his neighbour's land and remove the obſtruction, or have an action. *Lev.* 122. 2 *Salk.* 459.

CCCCLXIII.

If a new gate be unlawfully erected acroſs the public highway, it is a common nuſance, and any one paſſing that way may cut it down and deſtroy it. *Cro. Car.* 184. *Vide* 397.

CCCCLXIV.

If a man builds his houſe ſo cloſe to mine that his roof overhangs my roof and throws the water off his roof upon mine, this is nu-

* By ancient, is here underſtood, time out of mind. 2 *Salk.* 459.

ſance

ſance for which an action will lie. *Fitz. Nat. Brev.* 184. But this may be juſtified by cuſtom in *London*, by building on an old foundation to any height. *Wood's Inſt.* 443.

CCCCLXV.

If a man hath a water-courſe running to his houſe for neceſſary uſe, and a tanner erects a lime pit ſo near it that the water is ſpoiled, it is actionable. So if dye-houſes, *&c.* are erected, and the ſtink or filth deſtroy fiſh in a river. 2 *Roll. Abr.* 137.

CCCCLXVI.

An action lies for hindering the wholeſome air, and alſo for corrupting the air, but not for intercepting a proſpect. 9 *Rep.* 58.

CCCCLXVII.

If a perſon keeps his hogs or other noiſome animals, ſo near my houſe that the ſtench incommodes me, and makes the air unwholſome, I may have an action againſt him. *Ibid.*

CCCCLXVIII.

If one ſets up and exerciſes any offenſive trade, as a tanner, a tallow-chandler, or the like, in a place where they have not been uſed, his neighbour may have an action againſt him; for though theſe are lawful and neceſſary, yet they ſhould be exerciſed in remote places. *Cro. Car.* 510.

CCCCLXIX.

It is a nuſance, to ſtop or divert water, that runs to another's meadow or mill. 4 *Rep.* 89.

CCCCLXX.

If one does any act in itſelf lawful, which tends neceſſarily to the damage of another's property, it is a nuſance, and is actionable; and it is incumbent on him, to find ſome other place to do that act in, where it will be leſs offenſive. 3 *Black. Com.* 217.

CCCCLXXI.

The maſter ſhall be charged if any of his family lay, or caſt, any nuſance in the highway. *Noy's Max.* 94.

CCCCLXXII.

If a man has notice of ſome miſchievous quality in his dog, and he afterward does me an injury, I may maintain an action of damages againſt the maſter. 12 *Mod. Rep.* 555.

CCCCLXXIII.

If a man has an unruly horſe in a ſtable, and leaves open the ſtable door, whereby the horſe gets forth and doth miſchief, an action lies againſt the maſter. 1 *Vent.* 295.

CCCCLXXIV.

A man erects a nuſance and lets it; the continuance of the nuſance by the leſſee is a nuſance, and action lies againſt him. *Cro. Jac.* 373. *Moor* 353.

Parent and Child.

CCCCLXXV.

Every child is compellable, if of ſufficient ability, to maintain and provide for his parents in caſe of neceſſity. *Stat.* 43 *Eliz. c.* 2.

CCCCLXXVI.

The father may lawfully correct his child, being under age, in a reaſonable manner. 1 *Hawk. P. C.* 130.

CCCCLXXVII.

The conſent or concurrence of the parent, to the marriage of his child under age is neceſſary, and without it the contract is void. 26 *Geo.* 3. *c.* 33.

CCCCLXXVIII.

A father has no power over his ſon's eſtate, other than as his truſtee or guardian, and he muſt account for the profits when the ſon is of age. 3 *P. Wms.* 154. 1 *Black. Com.* 449.

CCCCLXXIX.

By the cuſtom of *London* the tuition and cuſtody of orphans, children of citizens and freemen, is committed to the mayor and aldermen of the city of *London*. *Co. Lit.* 88.

Vide ASSAULT and BATTERY, No. 42. and MAINTENANCE, 429, 430.

Partnerſhip.

CCCCLXXX.

To make a perſon liable as a partner, there muſt either be a contract between him and the oſtenſible perſon, to ſhare in the profit and loſs, or he muſt have permitted the other to make uſe of his credit, and to hold him out as one jointly anſwerable. 1 *Doug.* 371.

Pawn.

CCCCLXXXI.

If periſhable goods lie in pawn till they are ſpoiled, the party that pledged them ſhall

ſhall bear the loſs, unleſs it was, through the neglect or default of him that hath the keeping them. *Co. Lit.* 89.

CCCCLXXXII.

Where money is ſent generally on a pledge, the lender may alſo have his remedy againſt the perſon of the borrower, unleſs there is a ſpecial agreement to ſtand to the pledge only. 2 *Salk.* 523.

Vide QUALIFIED PROPERTY, No. 491. and SALE, No. 519.

Payment of Money.

CCCCLXXXIII.

Where a perſon has expended his own money for the uſe of another at his requeſt, the law implies a promiſe of re-payment. *Carth.* 446.

CCCCLXXXIV.

If money is paid by miſtake, on a bad conſideration, through extortion, impoſi-

tion,

tion, or oppreſſion:—or where one has had and received money to the uſe of another; the law implies, that the receiver undertook and promiſed to account for it to the true proprietor, and will repair him in equivalent damages. 4 *Burr.* 1012.

Vide BOND, No. 131.

Promiſes.

CCCCLXXXV.

A *verbal* promiſe to pay the debt of another in conſequence of forbearance, though good before the ſtatute of frauds, 9 *Rep.* 94. is now void. *Stat.* 29 *C.* 2. *c.* 3.

CCCCLXXXVI.

If a man promiſe to deliver a thing on ſuch a day, he is bound to do it without requeſt. 1 *Lev.* 284.

CCCCLXXXVII.

If one upon a good conſideration doth aſſume or promiſe to do a thing, without any

time fixed, he ſhall have reaſonable time allowed him for the performance, but no more. 1 *Lill. Prac. Reg.* 91.

CCCCLXXXVIII.

But no man is bound to his promiſe without good conſideration. *Noy's Max.* 9.

Vide EXECUTORS, No. 276.

Proſecution.

CCCCLXXXIX.

If a man proſecutes me, and his ſuit is utterly without cauſe, I may have an action againſt him for unjuſt vexation, and ſhall recover damages. *Fitz. Nat. Brev.* 116.

Proviſions.

CCCCXC.

A butcher, *&c.* ſelling bad or unwholeſome proviſions, and a vintner for ſelling bad wine, are ſeverely puniſhable. *Stat.* 61 *Hen.* 3. *c.* 6, 7. 12 *C.* 2. *c.* 25.

Qualified Property.

CCCCXCI.

A carrier has a qualified property in the goods he carries; an innkeeper in thoſe he ſecures; a pawnbroker in thoſe he takes as a pledge; and a landlord in thoſe he diſtrains; ſo that in caſe they are damaged or taken away, he may maintain an action for them. 13 *Rep.* 69.

CCCCXCII.

Though the finder of any thing, does not thereby acquire an abſolute property or ownerſhip, yet he has ſuch a property, as will enable him to keep it againſt all but the rightful owner. 1 *Stra.* 505.

Rent.

CCCCXCIII.

Rent cannot be ſued for in the court of conſcience in the city of *London*, nor in the court of requeſts of the *Tower Hamlets*. 1 *Doug.* 245.

CCCCXCIV.

If a tenant be in arrear of rent twenty years, and his landlord give him an acquittance for the *laſt rent due;* all the reſt of the rent in arrear will be preſumed to be paid; and ſo ſtrong is the preſumption in law, that no proof will be admitted againſt it. *Co. Lit.* 373.

Vide LANDLORD and TENANT, DISTRESS, and TENDER of MONEY, No. 532.

Sale of Goods, &c.

CCCCXCV.

If a man agree for the purchaſe of goods, he ſhall pay for them before he carry them away, unleſs a term of credit is expreſsly allowed. *Noy's Max.* 87.

CCCCXCVI.

If one man ſays the price of a horſe or other thing is twenty pounds, and the other

other ſays I will give you twenty pounds, but does not pay immediately: it is at the option of the ſeller whether he ſhall have it or no, except a day was given for payment. *Noy's Max.* 87.

CCCCXCVII.

The property of a horſe, *&c.* ſold by bargain and contract, is in the buyer immediately; but the ſeller may keep the horſe till he is paid for it, though he cannot bring an action for the money till the delivery, unleſs the horſe die between the contract and the delivery. *Ibid.*

CCCCXCVIII.

An action doth not lie, upon a bare affirmation that the thing ſold is worth ſo much, when in truth it was not; but otherwiſe it is, if it was warranted to be of that value. *Yelv.* 20.

CCCCXCIX.

If a man upon the ſale of goods warrants them to be good, the law annexes to this

warranty a tacit contract, that if they be not ſo, he ſhall make compenſation to the purchaſer; but the warranty muſt be *upon* the ſale, not *after* it. *Fitz. Nat. Brev.* 94. *Finch. L.* 189. unleſs a new conſideration ariſes.

D.

But if the vender knew the goods to be unſound, and hath uſed any art to diſguiſe them; or if in any reſpect, they differ from what he repreſents them to be to the purchaſer, he is anſwerable for their goodneſs; though no general warranty will extend to thoſe defects that are obvious to one's ſenſes. *Finch L.* 189.

DI.

If one takes up goods or wares of a tradeſman, without an expreſs agreement for a price, there the law concludes that both parties intentionally agreed, that the real value of the goods ſhould be paid.

DII.

If two perſons come to a ſhop, and one buys, and the other to procure him credit promiſes the ſeller, "*If he does not pay you I will*," this is a collateral undertaking, and void without writing, by the ſtatute of frauds; but if he ſays "*let him have the goods, I will be your paymaſter*," this is an undertaking as for himſelf, and he ſhall be intended to be the real buyer, and the other to act only as his ſervant. 1 *Salk.* 27. 2 *Term. Rep.* 70.

DIII.

After earneſt given, the vendor cannot ſell the goods to another without a default in the vendee; and therefore if the vendee does not come and pay and take the goods, the vendor ought to go and requeſt him, and then if he does not come and pay, and take away the goods in convenient time, the agreement is diſſolved, and he is at liberty to ſell them to any other perſon. 1 *Salk.* 113.

DIV.

An earneſt only binds the bargain, and gives the party a right to demand; but then a demand without payment of the money is void. 1 *Salk.* 113.

DV.

If a man ſells me goods to be delivered at a certain day, and doth not deliver them, I may have an action againſt him and recover damages. 4 *Rep.* 94.

DVI.

So if he delivers them in bad and unmerchantable condition. *Dyer*, 75.

DVII.

Where a perſon is intitled to a thing in groſs, he is not obliged to accept it by parcels; thus for example, if *A.* has contracted with me for the ſale of ten pipes of wine, which he is bound to deliver, and tenders me a part thereof only, I am not bound to accept it. 5 *Mod. Rep.* 71.

DVIII.

The general rule of law is, that all ſales and contracts, of any thing vendible in fairs or market overt, ſhall not only be good between the parties; but alſo be binding on all thoſe that have any right or property therein. 2 *Inſt.* 713.

DIX.

But if my goods are ſtolen from me, and ſold out of market overt, my property is not altered, and I may take them wherever I find them. 5 *Rep.* 83.

DX.

If goods are wrongfully taken, and ſold or pledged to any pawnbroker in *London*, *Weſtminſter*, or *Southwark*, or within two miles of them, the property ſhall not be altered thereby. *Stat.* 1 *Jac.* 1. *c.* 21.

DXI.

Even in market overt, if the goods be the property of the king, ſuch ſale, (though

regular in all other reſpects) ſhall not bind him. 2 *Inſt.* 713.

DXII.

If goods be ſtolen from a common perſon, and then taken by the king's officer from the felon, and ſold in open market, ſtill if the owner has uſed due diligence in proſecuting the thief to conviction, he loſes not his property in the goods. *Ibid.* *Bacon's Uſe of the Law.* 158.

DXIII.

If the buyer knoweth the property not to be in the ſeller, or if there be any other fraud in the tranſaction; if he knoweth the ſeller to be under age, or a married woman not uſually trading for herſelf; if the ſale be not originally and wholly made in the market or fair, or not at the uſual hours, the owner's property is not bound thereby. 2 *Inſt.* 713, 714.

DXIV.

If a man happens to buy his own goods in a fair or market, the contract ſhall not

not bind him ſo that he ſhall render the price, unleſs the property had been previouſly altered by a former ſale. *Perk. ſ.* 93.

DXV.

Notwithſtanding any number of intervening ſales, if the original vendor, who ſold without having the property, comes again into poſſeſſion of the goods, the original owner may take them if he finds them in his hands. 2 *Inſt.* 713.

DXVI.

Sale on a *Sunday* ſhall not be ſaid ſale in a market, to alter the property of the goods. *Noy's Max.* 2.

DXVII.

Expoſing to ſale any wares or goods on a *Sunday*, ſubjects the owner to a forfeiture of the goods to the poor, &c. *Stat.* 29 *C.* 2. *c.* 7.

DXVIII.

If a vendor of goods ſells them as his own, and his title proves deficient, the purchaſer without

without any expreſs warranty, may have an action, and ſhall recover the value. *Cro. Jac.* 474. 1 *Roll. Ab.* 90.

DXIX.

If goods are ſold after a writ of execution delivered to the ſheriff, the ſale is conſidered as fraudulent; and the property of the goods, is bound to anſwer for the debt, from the time of the delivery of the writ. *Stat.* 29 *C.* 2. *c.* 3. *Skin.* 257.

Vide CONTRACT, HUSBAND, and WIFE, and INFANT.

Ship.

DXX.

The maſter of a ſhip takes goods on board to carry for hire, the goods are ſpoiled, an action lies againſt the owners or the maſter, at the plaintiff's election. 3 *Lev.* 258, 259.

DXXI.

A maſter of a ſhip hath no property, either general or ſpecial, in his being conſtituted, though the law conſiders him as an officer, who muſt render an account for whatſoever is put into his cuſtody, and therefore whatever misfortunes happen, or loſſes occur, through negligence, wilfulneſs, or ignorance, in himſelf or mariners, he is anſwerable. *Hob.* 11.

DXXII.

The maſter of a ſhip buying proviſions for the ſhip, and having money from the owners to pay for proviſions, nevertheleſs takes them upon credit, and fails; the owners are liable to pay the debt, in proportion to their reſpective ſhares in the ſhip. 2 *Vern.* 643.

DXXIII.

The maſter of a ſhip, at his peril, muſt ſee that all things be forth-coming which are delivered

delivered to him, let what accident ſoever, happen, (the act of God, of an enemy, and perils and dangers of the ſeas, only excepted) but for fire, thieves, and the like, he muſt anſwer; and he is in the nature of a common carrier, and though he receives a ſalary, yet is a known and public officer, and one that the law looks upon to anſwer; and the plaintiff hath his election to charge either maſter or owners, or both, at his pleaſure, though he can have but one ſatisfaction. *Cro. Jac.* 330, 331. 1 *Sid.* 36. 4 *Rep.* 84. 1 *Mod.* 285. 2 *Keb.* 866. 3 *Keb.* 72. 112. 132. 138.

DXXIV.

The captain of a ſhip has no lien on the ſhip for wages, ſtores, or repairs, done in *England*. 1 *Doug.* 101.

DXXV.

If a ſhip be in the river *Thames*, and money be laid out there, either in the repairing, fitting out, new rigging, or apparel of the ſhip, this is no charge upon the ſhip, but the perſon thus employed, muſt reſort to the maſter or owner for payment. 2 *P. Wms.* 367.

DXXVI.

But if the ſhip be at ſea, where no treaty or contract can be made with the owner, and the maſter employs any perſon to do work on the ſhip, or to new rig or repair the ſame, this for neceſſity and encouragement of trade is a lien on the ſhip, and the maſter by the maritime law is allowed to hypothecate the ſhip. 2 *P. Wms.* 367.

DXXVII.

The repairer of a ſhip has his election to ſue the maſter who employed him, or the owners, but if he undertakes it, on a ſpecial promiſe from either, the other is diſcharged. 2 *Stra.* 816.

DXXVIII.

A maſter of a ſhip may keep the goods till he is paid his freight, but if he once parts with the poſſeſſion of them, he cannot re-take them. 12 *Mod. Rep.* 511.

Vide INSURANCE.

Tender of Money.

DXXIX.

No tender of payment in ſilver money exceeding 25*l.* at one time, is a ſufficient tender in law, for more than its value by weight, at five ſhillings and two pence per ounce. *Stat.* 14 *Geo.* 3. *c.* 42.

DXXX.

A tender of money, if it be made at any time before the day expires, is a good tender. *Co. Lit.* 202.

DXXXI.

If a tender is made of more than is due, the perſon to whom it is tendered, ought to take out what belongs to him. 5 *Rep.* 115.

DXXXII.

A tender in bags without ſhewing or telling it is good, if it can be proved that there was the ſum to be tendered. *Ibid.*

DXXXIII.

A tender upon the premiſes before the diſtreſs for rent is taken, makes the diſtreſs wrongful. A tender after the diſtreſs, and before the impounding makes the detainer wrongful. But a tender after the impounding makes neither the one nor the other wrongful, for it comes too late. 8 *Rep.* 147.

Time.

DXXXIV.

A month in law is a lunar month of twenty-eight days, unleſs otherwiſe expreſſed; therefore a leaſe for twelve months, is only forty-eight weeks; but a leaſe for *a* twelvemonth, is good for the whole year. 6 *Rep.* 62. 3 *Burr.* 1455.

DXXXV.

In the ſpace of a day, all the twenty-four hours are reckoned. The law generally rejects all fractions of a day, to avoid diſputes. *Co. Lit.* 135.

Trade.

DXXXVI.

By the cuſtom of *London*, no perſon whatſoever, not being free of the city of *London*, ſhall by any colour, way, or mean whatſoever, directly or indirectly, by himſelf or any other, keep any ſhop, or any other place whatſoever, inward or outward, for ſhew or putting to ſale of any wares or merchandizes whatſoever, by way of retail, or uſe any trade, occupation, myſtery, or handicraft, for hire, gain, or ſale, within that city. 8 *Rep.* 124.

DXXXVII.

No perſon may ſet up, occupy, uſe, or exerciſe, any craft, myſtery, or occupation, within *England* or *Wales*, except he has ſerved ſeven years as an apprentice thereto. *Stat.* 5 *Eliz. c.* 4. *Vide* 539, 540, 541.

DXXXVIII.

Nor may be ſet any perſon on work therein, except he ſhall have been apprentice, or having ſerved as an apprentice, will become a journeyman. *Ibid.*

DXXXIX.

But the widow of a tradeſman, who by cuſtom may carry on her huſband's trade, is not within the ſtatute. 2 *Salk.* 610.

DXL.

And for trading in a country village, apprenticeſhip is not neceſſary. 2 *Ld. Raym.* 1179.

DXLI.

Formerly it was ſaid that the reſtraint ſhall not extend further than the words expreſsly direct, and therefore that new arts and myſteries are not within the ſtatute. 1 *Roll. Rep.* 10. 1 *Vent.* 326. 346. But it has been ſince reſolved otherwiſe. 2 *Ld. Raym.* 1410. 1 *Stra.* 663.

DXLII.

Perſons not having ſerved an apprenticeſhip, and following a trade, either as a maſter or ſervant, without any effectual proſecution for ſeven years, may continue to follow it without moleſtation. 2 *Ld. Raym.* 1179. 2 *Wilſon* 168.

DXLIII.

All officers, ſoldiers, and mariners, who have been employed in his majeſty's ſervice, and have not deſerted, may exerciſe ſuch trades as they are apt for, in any town or place. *Stat.* 3 *Geo.* 3. *c.* 8.

DXLIV.

An apprentice diſcovering two offenders guilty of coining, ſo as they be convicted, ſhall be deemed a freeman, and may exerciſe his trade as if he had ſerved out his time. *Ibid.*

DXLV.

A perſon legally exerciſing a trade, may take a partner who hath not ſerved an apprenticeſhip

prenticeſhip to the trade, provided the partner ſhare only in the profits and loſs of the buſineſs, and do not actually exerciſe the trade. 1 *Burr.* 2.

Treſpaſs.

DXLVI.

If I command one to commit a treſpaſs, I ſhall be a treſpaſſer. *Noy's Max.* 93.

DXLVII.

If I enter a tavern, or any other place where I may lawfully enter, and there commit a treſpaſs, the law will judge that I entered for that purpoſe. 2 *Roll. Abr.* 561. 8 *Rep.* 147.

Trial.

DXLVIII.

An attempt to influence the jury corruptly by promiſes, perſuaſions, entreaties, money, entertainments, and the like, is called embracery,

embracery, and ſubjects the offender to fine and impriſonment; and the juror, if it be by taking money, to perpetual infamy, impriſonment for a year, and a forfeiture of the tenfold value. 38 *E.* 3. *ſt.* 1. *c.* 12. 32 *H.* 8. *c.* 9. 1 *Hawk. P. C.* 259, 260.

DXLIX.

If jurors eat or drink, at the coſt of him for whom they give their verdict, before they are agreed, or if they caſt lots whether they ſhall find for the plaintiff or defendant, the verdict may be ſet aſide and they are fineable. *Co. Lit.* 227. 2 *Lev.* 205.

DL.

If the plaintiff or any for him, after the evidence given, and the jury are retired from the bar, delivers any letter which was not given in evidence, to any of the jury touching the matter in iſſue, it ſhall make void the verdict, if it be in his favour; but not ſo if for the defendant. So *e converſo*. *Co. Lit.* 227.

DLI.

If jurors eat or drink at all, or have any eatables about them before verdict, without conſent of the court, they are fineable. *Owen* 38. *Plowd.* 519.

DLII.

A witneſs may not be called by the jury, to recite the ſame evidence he gave in court, when they are gone from the bar. *Cro. Eliz.* 189.

DLIII.

Nor may a party give a brief or notes of the cauſe, to the jury to conſider of; if he doth, both he and the jurors may be fined. *Moor* 815.

DLIV.

Sick and decrepit perſons, perſons not living in the country; perſons under twenty-one, or above ſeventy years of age, as well as phyſicians, and other medical perſons, counſel, attornies, officers of the courts,

courts, and clergymen, are excuſed from ſerving on juries. *Stat.* 13 *E.* 1. *c.* 38. 7 & 8 *W.* 3. *c.* 32. *F. N. B.* 166.

Vide EVIDENCE and WITNESS.

Unlawful Detention.

DLV.

If a man be unlawfully detained in any manner, it is falſe impriſonment, and conſiderable damages are recoverable; for the law very much favours liberty. 2 *Inſt.* 46.

DLVI.

If one man deprives another of his goods, or wrongfully detains his wife, child or ſervant, the owner may lawfully claim and retake them, ſo it be not in a riotous manner, nor attended with a breach of the peace. 3 *Inſt.* 134. *Hale's Anal.* § 46.

DLVII.

The very denial of goods to him that has a right to demand them, is an actual converſion

converſion to the uſe of him who denies them; for a converſion is an aſſuming the property, and right of diſpoſing of another's goods, and is actionable. 6 *Mod. Rep.* 212.

Uſury.

DLVIII.

If any perſon ſhall directly or indirectly take above the value of 5*l.* for the forbearance of 100*l.* for a year, and ſo after that rate for a greater or a leſſer ſum, the bond, contract, or aſſurance, is void, and he ſhall forfeit treble the amount of the principal. *Stat.* 12 *Ann. ſt.* 2. *c.* 16.

DLIX.

There can be no uſury without an actual loan. * *Lutw.* 273. *Sid.* 27.

DLX.

An agreement to pay double the ſum borrowed, or other penalty on the non-payment

of the principal debt, at a certain day, is not uſurious, becauſe it is in the power of the borrower wholly to diſcharge himſelf, by repaying the principal according to the bargain. 1 *Haw. P. C. c.* 82.

DLXI.

So if a man lend another 100*l.* for two years, to pay for the loan 30*l.* but if he pay the principal at the year's end he ſhall pay nothing for the intereſt, this is not uſury; unleſs the clauſe of redemption be mere colour. *Cro. Jac.* 509. 5 *Rep.* 69.

DLXII.

If there is an agreement to pay legal intereſt, and a premium is paid down over and above the intereſt, the agreement is uſurious and void. 1 *Doug.* 235.

DLXIII.

But the penalty is not incurred if the premium itſelf does not exceed legal intereſt, nor till more than legal intereſt is actually received. *Ibid.*

DLXIV.

Therefore an action may be brought for the penalty, though more than a year has elapſed ſince the payment of the premium, if it is not a year ſince what has been paid exceeded legal intereſt. 1 *Doug.* 235.

DLXV.

When upon a negotiation for a loan of money, the lender ſays he cannot advance the money, but will furniſh goods, which the other takes and ſells, if the ſecurity given is for a ſum of money, greatly exceeding the value of the goods and five *per cent.* intereſt, this is an uſurious loan, and the ſecurity and contract are both void. 2 *Doug.* 736.

DLXVI.

It is not uſury for a country banker in diſcounting bills to take over and above the five *per cent.* diſcount, a commiſſion, agreeable to the uſage, on the amount of the bill. 2 *Term Rep.* 52.

DLXVII.

The receipt of intereſt before the time when it is in ſtrictneſs due, being voluntarily paid by the debtor, for the greater convenience of the creditor, or for any other ſuch like conſideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the firſt contract, does not make the party liable. 1 *Hawk. P. C. c.* 82.

DLXVIII.

The grant of an annuity for lives, not only exceeding the rate allowed for intereſt, but alſo exceeding the known proportion for contracts of this kind, in conſideration of a certain ſum of money, is not within the meaning of the ſtatute, unleſs there be ſome underhand bargain, for the ſecurity of the re-payment of the principal or conſideration money. *Ibid. Cro. Jac.* 253.

DLXIX.

If intereſt upon a bond exceeds five *per cent. per annum*, where the principal and intereſt

intereſt are poſſibly in hazard, upon any contingency or caſualty; or if there is a hazard that one may have leſs than his principal, as upon a return of a ſhip from ſea, theſe are not uſury. *Show.* 8.

DLXX.

But if the intereſt only be hazarded on ſuch a contract, and the whole principal ſecured, the whole is uſurious. *Cro. Jac.* 508.

DLXXI.

It is not material, whether the payment both of the principal, and alſo of the uſurious intereſt, be ſecured by the ſame or by different conveyances, but all writings whatſoever for the ſtrengthening ſuch a contract are void. 1 *Hawk. P. C. c.* 82.

DLXXII.

A contract reſerving to the lender, a greater advantage than is allowed by the ſtatute, is equally within the meaning of it; whether the whole be reſerved by way of in-

tereſt, or in part only under that name, and in part by way of rent for a houſe, let at a rate plainly exceeding the known value. *Cro. Jac.* 440.

DLXXIII.

The conſtruction of caſes of this nature, muſt be governed by the circumſtances of the whole matter, from which the intention of the parties will appear in making the bargain; and if it was in truth uſurious, it is void, however it may be diſguiſed by a ſpecious aſſurance. 1 *Hawk. P. C. c.* 82. 5 *Rep.* 69.

DLXXIV.

If a man gives a uſurious bond, and tenders the whole money, yet if the party will take only the legal intereſt, he ſhall not forfeit the treble value by the ſtatute. 4 *Leon.* 43.

DLXXV.

But though the treble value is not forfeited, unleſs ſomething be *taken* above the legal rate; yet the very contract alone avoids the ſecurity. 1 *Hawk. P. C. c.* 82. *Cro. Eliz.* 20.

DLXXVI.

Upon an information upon the ſtatute of uſury, he who borrows the money may be a witneſs after he hath paid the money. 1 *Ld. Raym.* 191. 2 *Roll. Abr.* 685.

Vide BANKRUPT, No. 64.

Will.

DLXXVII.

All perſons are capable of making wills, except ſuch as are of *non-ſane* memory, married women, perſons attainted, or convicted of felony or treaſon, perſons outlawed, or excommunicate, or an infant. *Went. Off. Ex.* 14.

DLXXVIII.

An infant of the age of eighteen years, may make a teſtament of goods and chattels, and conſtitute executors; though ſometimes wills have been made by infants of fourteen years of age, and the common law has refuſed to intermeddle. *Wood's Inſt.* 319.

DLXXIX.

But an infant under twenty-one years of age, cannot deviſe lands. *Went. Off. Ex.* 212. *Co. Lit.* 89.

DLXXX.

All deviſes of lands and tenements muſt not only be in writing, but be ſigned by the teſtator, or ſome perſon in his preſence, and by his expreſs direction; and be ſubſcribed in the preſence of three or four credible witneſſes. *Stat.* 29 *C.* 2. *c.* 3. But though the witneſſes muſt all ſee the teſtator ſign, or at leaſt acknowledge the ſigning, yet they may do it at different times, though they muſt ſubſcribe in his preſence. 1 *P. Wms.* 740. *Freem.* 486. 2 *Ch. Caſ.* 109. *Prec. Chan.* 185.

DLXXXI.

If a teſtator in a ſtate of inſenſibility when his will is atteſted, it is not executed within the meaning of the *Stat.* 29 *C.* 2. *c.* 3. although he be corporeally preſent. 1 *Doug.* 241.

DLXXXII.

It is ſufficient if the teſtator was in a ſituation where he might have ſeen the witneſſes ſign. 1 *Doug.* 242.

DLXXXIII.

It is not neceſſary that the teſtator ſhould ſign in the preſence of the witneſſes if he acknowledge his hand-writing to them all; and ſuch acknowledgment may be to each at different times. 2 *Vez.* 454. 3 *P. Wms.* 252.

DLXXXIV.

The ſealing of a will is a ſigning within the meaning of the 29 *Car.* 2. c. 3. 1 *Str.* 68, 69.

DLXXXV.

A republication requires the ſame ſolemnities as the original publication. 1 *Doug.* 36.

DLXXXVI.

No lands purchaſed after the deviſe is made, will paſs under it, unleſs ſubſequent

to the contract or purchaſe the deviſor republiſhes his will. *Moor* 255. *Cro. Eliz.* 493. 1 *Salk.* 238.

DLXXXVII.

Written wills, where there is no deviſe of lands, need no witneſs of their publication; though the ſafer way is to have witneſſes. *Godolph. p.* 1. *c.* 21. *Gilb. Rep.* 260.

DLXXXVIII.

A teſtament of chattels or perſonal property, written in the teſtator's own hand, though it has neither his name nor his ſeal to it, nor witneſſes preſent at its publication, is good; provided the hand-writing be clearly and ſufficiently proved. *Ibid.*

DLXXXIX.

It is not ſufficient that the teſtator hath his memory to anſwer uſual and familiar queſtions, when he makes his will; but he ought to have a diſpoſing memory, ſo that he is able to diſpoſe of his lands, *&c.* with underſtanding and reaſon. 6 *Rep.* 23.

DXC.

No evidence of verbal declarations by the teſtator, can be allowed to explain a will, and give it another ſenſe than can be collected from the will ſtanding alone. 4 *Rep.* 4. *Cro. Eliz.* 498.

DXCI.

No word in a deviſe ſhall be void, if it may have any good expoſition. *Cro. Eliz.* 696.

DXCII.

The firſt grant and the laſt will, are of the greateſt force. *Co. Lit.* 112.

DXCIII.

If there be not apt words, yet if the intent may be collected, it is ſufficient. *Cro. Eliz.* 745.

DXCIV.

The laſt words in a will controul the firſt. *Plowd. Com.* 541.

DXCV.

No written will can be revoked or altered, by a ſubſequent nuncupative one, except it be in the life-time of the teſtator reduced to writing, and read over to him and approved; and proved to have been ſo done, by the oath of three competent witneſſes at the leaſt. *Stat.* 29 *C.* 2. *c.* 3.

DXCVI.

A revocation is good, if the teſtator acknowledge his ſignature, though he do not ſign in the preſence of the witneſſes. 1 *Doug.* 244.

DXCVII.

No nuncupative will ſhall in any wiſe be good, where the eſtate bequeathed exceeds 30*l.* unleſs proved by three competent witneſſes preſent at the making thereof, and unleſs they, or ſome of them, were ſpecially requeſted by the teſtator himſelf; and unleſs it was made in his laſt ſickneſs, in his own habitation, or where he had previouſly reſided

ſided ten days at leaſt; except he be ſurpriſed with ſickneſs on a journey, or from home, and dies without returning to his dwelling. 1 *Doug.* 244.

DXCVIII.

No nuncupative will ſhall be proved by the witneſſes, after ſix months from the making, unleſs it were put in writing within ſix days. Nor ſhall it be proved till fourteen days after the death of the teſtator, nor till proceſs hath firſt iſſued to call in the widow or next of kin. *Ibid.*

DXCIX.

A nuncupative will is a will by word of mouth; it is a verbal declaration of the teſtator's mind, which is afterwards reduced into writing; and it is good to diſpoſe of perſonal eſtate but not of lands. 2 *Nelſ. Abr.* 1191.

DC.

The neceſſity of leaving the heir a ſhilling or ſome expreſs legacy is a groundleſs vulgar error. 2 *Black. Com.* 503.

DCI.

It hath been held, that without an expreſs revocation, if a man, who hath made his will, afterwards marries and hath a child, this is a preſumptive or implied revocation of his former will, which he made in his eſtate of celibacy. *Ib.* 502. *Ld. Raym.* 441.

DCII.

Marriage and the birth of a child, certainly amount to a revocation of a will, if it is of *all* the teſtator's land. 1 *Doug.* 39.

DCIII.

Marriage alone is a revocation of a will of land by a woman. *Ib.* 35.

DCIV.

If a will is in two parts, and the teſtator cancels the one in his own cuſtody, that is a revocation. *Ibid.* 40.

DCV.

A will revoked by a ſubſequent will, but not cancelled, is re-eſtabliſhed by cancelling the ſubſequent will. *Ibid.*

Witneſs.

DCVI.

If a man be ſubpœnaed as a witneſs upon a trial, he muſt, laying aſide all pretences or excuſes, appear in court, on pain of 100*l.* to be forfeited to the king, and 10*l.* together with damages equivalent to the loſs ſuſtained by the want of his evidence, to the party aggrieved. 3 *Black. Com.* 369. But witneſſes ought to have a reaſonable time to put their own affairs in ſuch order, that their attendance upon the court may be of as little prejudice to themſelves as poſſible: and the court of *B. R.* held that notice at two in the afternoon in the city, to attend the ſittings that evening at *Weſtminſter*, was too ſhort a time. *Str.* 510.

DCVII.

A witneſs who wilfully abſents himſelf may be attached for contempt, or an action on the caſe will lie againſt him. 1 *Doug.* 561.

DCVIII.

But if a witneſs is unable to travel, a judge may excuſe his non-appearance, and certify his examination. *Wood's Inſt.* 599.

DCIX.

Where a witneſs cannot be preſent at the trial, he may, by the conſent of the plaintiff and defendant, or by rule of court, be examined upon interrogatories at the judge's chamber. *Ibid.*

DCX.

But no witneſs is bound to appear at all, unleſs his reaſonable expences be tendered him; and if he appears, he is not bound to give evidence, till ſuch charges are actually paid him; except he both reſides, and is ſummoned to give evidence, within the bills of mortality. 3 *Black. Com.* 169.

DCXI.

No counſel, attorney, or other perſon, intruſted with the ſecrets of the cauſe by the party

party himſelf ſhall be compelled, or perhaps allowed to give evidence of ſuch matters of privacy. But he may be examined as to mere matters of fact, as the execution of a deed or the like, which might have come to his knowledge without being intruſted with the cauſe. *Ibid.* 170. *Law of Niſi Prius* 267.

DCXII.

If a juror knows any thing of the matter, he may be ſworn as a witneſs, and give his evidence publicly in court. *Styl.* 233. 1 *Sid.* 133.

DCXIII.

The law judges generally, that it is not proper to admit a man to ſwear that to be true, which it is plainly his intereſt ſhould be true. 2 *Hawk. P. C.* 433.

DCXIV.

All perſons of what religion or country they may be, that have the uſe of their reaſon, are to be received and examined, except ſuch as are infamous, *&c.* or ſuch as are intereſted in the event of the cauſe; but it

it muſt be a *preſent*, not a *future* contingent intereſt. 2 *Salk.* 690. *Bull.* 288. *Co. Lit.* 6. 357. 1 *Salk.* 283. 287.

DCXV.

The huſband cannot be a witneſs for or againſt the wife, nor the wife for or againſt the huſband, becauſe their intereſts are the ſame (unleſs in criminal caſes.) Bail cannot be a witneſs unleſs exonerated.—All others are competent witneſſes, though the jury from other circumſtances judge of their credibility. 1 *Salk.* 283. 287. *Str.* 436. 140. 1122. 1 *P. Wms.* 239.

DCXVI.

Witneſſes cannot teſtify a negative, but only an affirmative. *Co. Lit.* 6.

DCXVII.

No man is bound to anſwer a queſtion which tends to criminate himſelf. 2 *Hawk. P. C.* 433. *State Trials* v. 1. 557.

DCXVIII.

As every witneſs ſwears to depoſe the whole truth, ſo he is not to conceal any part of what he knows, whether he be interrogated to that point or not. 3 *Black. Com.* 372.

DCXIX.

An executor may be ſworn in a cauſe relating to the will, where he is not a reſiduary legatee, becauſe he is no more than a truſtee, and has no intereſt. *Mod. Rep.* 107.

Vide EVIDENCE and TRIAL.

EXPLANATION

OF THE

LAW TERMS

Made uſe of in the foregoing Collection.

CHATTELS —comprehends all goods moveable and immoveable, except ſuch as are in the nature of freehold, or part of it. Under this term a leaſe for years will paſs.

DETINUE —is a writ that lies againſt him who having goods or chattels delivered to keep, refuſes to deliver them. In this action the thing detained is to be recovered; but if one cannot recover the thing itſelf, he ſhall recover damages for it and alſo for the detainer.

DISTREINOR —is the landlord who ſeizes the goods of his tenant by way of diſtreſs for his rent.

DEVISE —is properly a gift of lands or tenements by will in writing.

DEVISOR —is he who makes ſuch a gift.

FREEHOLD —is that land or tenement which a man holds in fee-ſimple, fee-tail, or for term of life.

HYPOTHECATE —is to pledge the ſhip for neceſſary repairs, rigging, &c.

INTESTATE —is he who dies without having made and left a will.

INDORSER —is the perſon who indorſes a bill of exchange.

INDORSEE —is the perſon to whom it is indorſed.

JUDGMENT —here, ſignifies money due upon the judgment of any court of record, or upon a judgment acknowledged for a debt.

JUROR —is he who ſerves on a jury.

LEGATEE —is he to whom a legacy is bequeathed by will.

OBLIGOR —is he who ſigns or makes a bond, and

OBLIGEE —is he to whom it is made.

ORDINARY —is he that hath ordinary juriſdiction, as the biſhop or any other that hath exempt and immediate juriſdiction in eccleſiaſtical cauſes.

REPLEVY —is to redeem the goods taken in diſtreſs, by putting in legal ſureties to anſwer the diſtreinor in a court of law.

RESCOUS —ſignifies a forcible ſetting at liberty a perſon arreſted, or goods taken, by the proceſs or courſe of law.

RECOGNIZANCE—is a bond or obligation of record, entered into before ſome court of record, or before a magiſtrate duly authorized.

REMAINDER —is an eſtate limited in lands or tenements, to be enjoyed after the eſtate of another is expired.

REVERSION —is the reſidue of an eſtate, which after the limitations ceaſe, reverts to the original donor or his heirs.

STATUTE —here, is a ſhort writing in the nature of a bond, for the ſecurity of money to a private perſon made before a magiſtrate, as a ſtatute merchant, or a ſtatute ſtaple.

TESTATOR —is the perſon who died leaving a will.

TENEMENT —comprehends not only lands and other inheritances that are held, but alſo offices, rents, commons, profits ariſing out of lands and the like, wherein a man hath any freehold.

TROVER —is an action which a man hath againſt one who having found any of his goods refuſeth to deliver them upon demand: or if another hath in his poſſeſſion my goods, by delivery to him or otherwiſe, and he ſells or makes uſe of them without my conſent, this is a converſion for which trover lies: ſo if he doth not actually convert them, but refuſeth to deliver them on demand.

VENDOR —is he who ſells goods.

FINIS.

Ex. Gwn B.